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Utah Rules of Civil Procedure

Rule 4. Process.

(a) Signing of summons. The summons shall be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and served.

(b) Time of service. In an action commenced under Rule 3(a)(1), the summons together with a copy of the complaint shall be served no later than 120 days after the filing of the complaint unless the court allows a longer period of time for good cause shown. If the summons and complaint are not timely served, the action shall be dismissed, without prejudice on application of any party or upon the court's own initiative. In any action brought against two or more defendants on which service has been obtained upon one of them within the 120 days or such longer period as may be allowed by the court, the other or others may be served or appear at any time prior to trial.

(c) Contents of summons.

(1) The summons shall contain the name of the court, the address of the court, the names of the parties to the action, and the county in which it is brought. It shall be directed to the defendant, state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. It shall state the time within which the defendant is required to answer the complaint in writing, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant. It shall state either that the complaint is on file with the court or that the complaint will be filed with the court within ten days of service.

(2) If the action is commenced under Rule 3(a)(2), the summons shall state that the defendant need not answer if the complaint is not filed within 10 days after service and shall state the telephone number of the clerk of the court where the defendant may call at least 13 days after service to determine if the complaint has been filed.

(3) If service is made by publication, the summons shall briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

~~(d) By whom served. The summons and complaint may be served in this state or any other state or territory of the United States, by the sheriff or constable, or by the deputy of either, by a United States Marshal or by the marshal's deputy, or by any other person 18 years of age or older at the time of service, and not a party to the action or a party's attorney.~~

~~(e)~~ (d) Method of Service. Unless waived in writing, service of the summons and complaint shall be by one of the following methods:

(1) Personal service. The summons and complaint may be served in any state or judicial district of the United States by the sheriff or constable or by the deputy of either, by a United States Marshal or by the marshal's deputy, or by any other person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the process, service shall be sufficient if the person serving the same shall state the name of the process and offer to deliver a copy thereof. Personal service shall be made as follows:

(A) Upon any individual other than one covered by subparagraphs (2), (3) or (4) (B), (C) or (D) below, by delivering a copy of the summons and/or the complaint to the individual personally, or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing, or by delivering a copy of the

1 summons and/or the complaint to an agent authorized by appointment or by law to receive  
2 service of process;

3 (B) Upon an infant (being a person under 14 years) by delivering a copy of the summons and  
4 the complaint to the infant and also to the infant's father, mother or guardian or, if none can be  
5 found within the state, then to any person having the care and control of the infant, or with whom  
6 the infant resides, or in whose service the infant is employed;

7 (C) Upon ~~a natural person~~ an individual judicially declared to be of unsound mind or  
8 incapable of conducting ~~his~~ the person's own affairs, by delivering a copy of the summons and  
9 the complaint to the person and to the person's legal representative if one has been appointed and  
10 in the absence of such representative, to the individual, if any, who has care, custody or control  
11 of the person;

12 (D) Upon an individual incarcerated or committed at a facility operated by the state or any of  
13 its political subdivisions, by delivering a copy of the summons and the complaint to the person  
14 who has the care, custody, or control of the individual to be served, or to that person's designee  
15 or to the guardian or conservator of the individual to be served if one has been appointed, who  
16 shall, in any case, promptly deliver the process to the individual served;

17 (E) Upon any corporation, not herein otherwise provided for, upon a partnership or upon an  
18 ~~other~~ unincorporated association which is subject to suit under a common name, by delivering a  
19 copy of the summons and the complaint ~~thereof~~ to an officer, a managing or general agent, or  
20 other agent authorized by appointment or by law to receive service of process and, if the agent is  
21 one authorized by statute to receive service and the statute so requires, by also mailing a copy of  
22 the summons and the complaint to the defendant. If no such officer or agent can be found within  
23 the state, and the defendant has, or advertises or holds itself out as having, an office or place of  
24 business within the state or elsewhere, or does business within this state or elsewhere, then upon  
25 the person in charge of such office or place of business;

26 (F) Upon an incorporated city or town, by delivering a copy of the summons and the  
27 complaint ~~thereof~~ to the recorder;

28 (G) Upon a county, by delivering a copy of the summons and the complaint to the county  
29 clerk of such county;

30 (H) Upon a school district or board of education, by delivering a copy of the summons and  
31 the complaint to the superintendent or business administrator of the board;

32 (I) Upon an irrigation or drainage district, by delivering a copy of the summons and the  
33 complaint to the president or secretary of its board;

34 (J) Upon the state of Utah, in such cases as by law are authorized to be brought against the  
35 state, by delivering a copy of the summons and the complaint to the attorney general and any  
36 other person or agency required by statute to be served; and

37 (K) Upon a department or agency of the state of Utah, or upon any public board, commission  
38 or body, subject to suit, by delivering a copy of the summons and the complaint to any member  
39 of its governing board, or to its executive employee or secretary.

40 (2) Service by mail or commercial courier service.

41 (A) The summons and complaint may be served upon an individual other than one covered  
42 by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or  
43 judicial district of the United States provided the defendant signs a document indicating receipt.

44 (B) The summons and complaint may be served upon an entity covered by paragraphs  
45 (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district

1 of the United States provided defendant's agent authorized by appointment or by law to receive  
2 service of process signs a document indicating receipt.

3 (C) Service by mail or commercial courier service shall be complete on the date the receipt  
4 is signed as provided by this rule.

5 ~~(f) (3)~~ Service and proof of service in a foreign country. Service in a foreign country shall be  
6 made as follows:

7 ~~(4)~~ (A) In the manner prescribed by the law of the foreign country for service in an action in  
8 any of its courts of general jurisdiction; or

9 ~~(2)~~ (B) Upon an individual, by personal delivery; and upon a corporation, partnership or  
10 association, by delivering a copy of the summons and the complaint to an officer or a managing  
11 general agent; provided that such service be made by a person who is not a party to the action,  
12 not a party's attorney, and is not less than 18 years of age, or who is designated by order of the  
13 court or by the foreign court; or

14 ~~(3)~~ (C) By any form of mail, requiring a signed receipt, to be addressed and dispatched by the  
15 clerk of the court to the party to be served as ordered by the court. ~~Proof of service in a foreign~~  
16 ~~country shall be made as prescribed in these rules for service within this state, or by the law of~~  
17 ~~the foreign country, or by order of the court. When service is made pursuant to subpart (3) of this~~  
18 ~~subdivision, proof of service shall include a receipt signed by the addressee or other evidence of~~  
19 ~~delivery to the addressee satisfactory to the court.~~

20 ~~(g)~~ (4) Other service.

21 (A) Where the identity or whereabouts of the person to be served are unknown and cannot  
22 be ascertained through reasonable diligence, where service upon all of the individual parties is  
23 impracticable under the circumstances, or where there exists good cause to believe that the  
24 person to be served is avoiding service of process, the party seeking service of process may file a  
25 motion supported by affidavit requesting an order allowing service by publication, ~~by mail~~, or by  
26 some other means. The supporting affidavit shall set forth the efforts made to identify, locate or  
27 serve the party to be served, or the circumstances which make it impracticable to serve all of the  
28 individual parties.

29 (B) If the motion is granted, the court shall order service of process by publication, ~~by mail~~  
30 ~~from the clerk of the court, or~~ by other means, ~~or by some combination of the above~~, provided  
31 that the means of notice employed shall be reasonably calculated, under all the circumstances, to  
32 apprise the interested parties of the pendency of the action to the extent reasonably possible or  
33 practicable. The court's order shall also specify the content of the process to be served and the  
34 event or events as of which service shall be deemed complete. A copy of the court's order shall  
35 be served upon the defendant with the process specified by the court.

36 (C) In any proceeding where summons is required to be published, the court shall, upon the  
37 request of the party applying for publication, designate the newspaper in which publication shall  
38 be made. The newspaper selected shall be a newspaper of general circulation in the county  
39 where such publication is required to be made and shall be published in the English language.

40 ~~(h) Manner of proof. In a case commenced under Rule 3(a)(1), the party serving the process~~  
41 ~~shall file proof of service with the court promptly, and in any event within the time during which~~  
42 ~~the person served must respond to the process, and proof of service must be made within ten~~  
43 ~~days after such service. Failure to file proof of service does not affect the validity of the service.~~  
44 ~~In all cases commenced under Rule 3(a)(1) or Rule 3(a)(2), the proof of service shall be made as~~  
45 ~~follows:~~

1       ~~(1) If served by a sheriff, constable, United States Marshal, or the deputy of any of them, by~~  
2 ~~certificate with a statement as to the date, place, and manner of service;~~

3       ~~(2) If served by any other person, by affidavit with a statement as to the date, place, and~~  
4 ~~manner of service, together with the affiant's age at the time of service;~~

5       ~~(3) If served by publication, by the affidavit of the publisher or printer or that person's~~  
6 ~~designated agent, showing publication, and specifying the date of the first and last publications;~~  
7 ~~and an affidavit by the clerk of the court of a deposit of a copy of the summons and complaint in~~  
8 ~~the United States mail, if such mailing shall be required under this rule or by court order;~~

9       ~~(4) If served by United States mail, by the affidavit of the clerk of the court showing a~~  
10 ~~deposit of a copy of the summons and complaint in the United States mail, as may be ordered by~~  
11 ~~the court, together with any proof of receipt;~~

12       ~~(5) By the written admission or waiver of service by the person to be served, duly~~  
13 ~~acknowledged, or otherwise proved.~~

14       ~~(i) Amendment. At any time in its discretion and upon such terms as it deems just, the court~~  
15 ~~may allow any process or proof of service thereof to be amended, unless it clearly appears that~~  
16 ~~material prejudice would result to the substantial rights of the party against whom the process~~  
17 ~~issued.~~

18       (e) Proof of Service.

19       ~~(1) If service is not waived, the person effecting service shall file proof with the court. The~~  
20 ~~proof of service must state the date, place, and manner of service. Proof of service made~~  
21 ~~pursuant to paragraph (d)(2) shall include a receipt signed by the defendant or defendant's agent~~  
22 ~~authorized by appointment or by law to receive service of process. If service is made by a~~  
23 ~~person other than by an attorney, the sheriff or constable, or by the deputy of either, by a United~~  
24 ~~States Marshal or by the marshal's deputy, the proof of service shall be made by affidavit.~~

25       ~~(2) Proof of service in a foreign country shall be made as prescribed in these rules for service~~  
26 ~~within this state, or by the law of the foreign country, or by order of the court. When service is~~  
27 ~~made pursuant to paragraph (d)(3)(C), proof of service shall include a receipt signed by the~~  
28 ~~addressee or other evidence of delivery to the addressee satisfactory to the court.~~

29       ~~(3) Failure to make proof of service does not affect the validity of the service. The court~~  
30 ~~may allow proof of service to be amended.~~

31       ~~(j) Refusal of copy. If the person to be served refuses to accept a copy of the process, service~~  
32 ~~shall be sufficient if the person serving the same shall state the name of the process and offer to~~  
33 ~~deliver a copy thereof.~~

34       ~~(k) Date of service to be endorsed on copy. At the time of service, the person making such~~  
35 ~~service shall endorse upon the copy of the summons left for the person being served, the date~~  
36 ~~upon which the same was served, and shall sign his or her name thereto, and, if an officer, add~~  
37 ~~his or her official title.~~

38       ~~(l) Designation of newspaper for publication of notice. In any proceeding where summons or~~  
39 ~~other notice is required to be published, the court shall, upon the request of the party applying for~~  
40 ~~such publication, designate the newspaper and authorize and direct that such publication shall be~~  
41 ~~made therein; provided, that the newspaper selected shall be a newspaper of general circulation~~  
42 ~~in the county where such publication is required to be made and shall be published in the English~~  
43 ~~language.~~

44       (f) Waiver of Service; Payment of Costs for Refusing to Waive.

1       (1) A plaintiff may request a defendant subject to service under paragraph (d) to waive  
2 service of a summons. The request shall be mailed or delivered to the person upon whom service  
3 is authorized under paragraph (d). It shall include a copy of the complaint, shall allow the  
4 defendant at least 20 days from the date on which the request is sent to return the waiver, or 30  
5 days if addressed to a defendant outside of the United States, and shall be substantially in the  
6 form of the Notice of Lawsuit and Request for Waiver of Service of Summons set forth in the  
7 Appendix of Forms attached to these rules.

8       (2) A defendant who timely returns a waiver is not required to respond to the complaint until  
9 45 days after the date on which the request for waiver of service was mailed or delivered to the  
10 defendant, or 60 days after that date if addressed to a defendant outside of the United States.

11       (3) A defendant who waives service of a summons does not thereby waive any objection to  
12 venue or to the jurisdiction of the court over the defendant.

13       (4) If a defendant refuses a request for waiver of service submitted in accordance with this  
14 rule, the court shall impose upon the defendant the costs subsequently incurred in effecting  
15 service.

16       ADVISORY COMMITTEE NOTE

17       Rule 4 constitutes a substantial change from prior practice. The rule modernizes and  
18 simplifies procedure relating to service of process. Although this rule and Rule 3 retain the  
19 ten-day summons procedure for commencement of actions, this rule endeavors to make practice  
20 under the ten-day summons provision more consistent with practice in actions commenced by  
21 the filing of a complaint. The rule retains portions of prior Rule 4, adopts portions of the present  
22 federal Rule 4, and adopts entirely new language in other areas. The rule eliminates the statement  
23 (appearing in paragraph (m) of the prior rule) that all writs and process may be served by any  
24 constable of the court. In the committee's view, this rule does not properly deal with the question  
25 of who may serve types of process other than the summons and complaint. In recommending the  
26 elimination of paragraph (m), the committee did not intend to change the law governing  
27 eligibility to serve such other process.

28       Paragraph (a). This paragraph eliminates the prior rule's reference to the issuance of  
29 summonses. See paragraph (b). Otherwise the paragraph is identical to the former paragraph (a).

30       Paragraph (b). This paragraph, a substantial change from the prior rule, requires that in an  
31 action commenced under Rule 3(a)(1), the summons, together with a copy of the complaint, must  
32 be served within 120 days of the filing of the complaint. The time period was borrowed from  
33 Rule 4(j), Federal Rules of Civil Procedure.

34       Paragraph (c). This paragraph makes minor revisions to the corresponding paragraph of the  
35 prior rule. In addition to data historically required to appear in the summons, the address of the  
36 court and information concerning the plaintiff or plaintiff's attorney are also required.

37       Paragraph (d). In prescribing the persons who may serve process, this paragraph eliminates  
38 the prior rule's distinction between in-state and out-of-state service. The paragraph is consistent  
39 with other changes in the rule designed to simplify and unify practice for in-state and out-of-state  
40 service. In order to be eligible to serve a summons or complaint, persons who are not sheriffs or  
41 other law enforcement personnel must be at least 18 years of age at the time of service. For  
42 eligibility to make service in a foreign country, see paragraph (f)(d)(3).

43       ~~Paragraph (e). This paragraph and paragraphs (f) and (g) simplify, change and reorganize the~~  
44 ~~requirements for methods of service as they appeared in paragraphs (e) and (f) of the former rule.~~  
45 Subparagraph (e)(1)(A) presents the general rule for personal service on individuals who are



1 not infants, incompetent, or incarcerated. Subparagraph (2B) deals with service on infants and  
2 subparagraph (3C) with service on incompetent persons. Subparagraphs (4A), (2B) and (3C) are  
3 patterned after Rule 4(e), Federal Rules of Civil Procedure. Subparagraph (4D) deals with  
4 service on persons who are incarcerated or committed to the custody of a state institution.  
5 Subparagraph (5E) deals with service on business entities. Subparagraphs (6F) through (9I)  
6 change and modernize service on political subdivisions of the state. Subparagraphs (40J) and  
7 (44K) provide for service on the state and its departments, agencies, boards and commissions  
8 with only minor changes from the prior rule. Subparagraph (d)(2) adds a provision for service  
9 by mail or commercial courier service within any judicial district of the United States. The term  
10 “mail” refers to services provided by the United States Postal Service. The term “commercial  
11 courier service” refers to businesses that provide for the delivery of documents. Examples of  
12 “commercial courier service” include Federal Express and United Parcel Service. Methods of  
13 service by mail or commercial courier service must provide for a document indicating receipt.  
14 Subparagraphs (A) and (B) specify who must sign the document indicating receipt. For service  
15 under Subparagraph (d)(2) to be effective, the court must be clearly convinced that the proper  
16 person signed the document indicating receipt. Infants or incompetent persons may not be  
17 served by mail or commercial courier service. Subparagraph (C) details when service by mail or  
18 commercial courier service is complete.

19 Paragraph (fd)(3). This paragraph provides several alternative means by which service must  
20 be made in foreign countries and provides for proof of such service.

21 Paragraph (gd)(4). This paragraph replaces most of paragraph (f) of the prior rule. It is  
22 designed to permit alternative means of service where the identity or whereabouts of the person  
23 to be served is unknown, where personal service is impracticable, or where a party avoids  
24 personal service. Under the circumstances identified in the rule, this paragraph permits the court  
25 to fashion means of service reasonably calculated to apprise the parties of the pendency of the  
26 action. Use of this provision is not limited to actions traditionally considered in rem or quasi in  
27 rem. See Carlson v. Bos, 740 P.2d 1269, 1272 (Utah 1987). The present rule eliminates specific  
28 mention of service by telegraph or telephone (in paragraph (1) of the prior rule) since such  
29 service could be ordered under this paragraph if appropriate. The court's order of substituted  
30 service must specify the content of service and the event or events as of which service will be  
31 deemed complete. A copy of the order must itself be served so that the party served will be able  
32 to determine the sufficiency of service and the time as of which his or her response is due.

33 Paragraph (he). This paragraph replaces paragraph (g) in the prior rule. It requires proof of  
34 service to be filed "promptly" and in any event before a responsive pleading is due. The rule  
35 eliminates failure to file proof of service as a basis for challenging the validity of service. The  
36 rule contains specific requirements for proof of service depending upon who serves and what  
37 method of service is used. If the summons and complaint are served by mail or commercial  
38 courier service, subparagraph (1) requires the receipt signed by defendant or defendant's agent to  
39 be included in the proof of service.

40 Paragraph (f) adds an option for a plaintiff to request a defendant to waive service. This  
41 provision is similar to federal Rule (4)(d). The defendant is required to return the waiver of  
42 service within 20 days (30 days for a defendant outside the United States) from the date the  
43 request for waiver is sent. The rule grants a defendant who waives service additional time to file  
44 a response to the complaint. A defendant who does not return the request for waiver of service  
45 will be assessed plaintiff's actual costs in effecting service under other provisions of this rule.

1 Rule 6. Time

2 (a) Computation. In computing any period of time prescribed or allowed by these rules, by  
3 the local rules of any district court, by order of court, or by any applicable statute, the day of the  
4 act, event, or default from which the designated period of time begins to run shall not be  
5 included. The last day of the period so computed shall be included, unless it is a Saturday, a  
6 Sunday, or a legal holiday, in which event the period runs until the end of the next day which is  
7 not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, ~~after~~  
8 ~~including~~ without reference to any additional time provided under subsection (e), is less than 11  
9 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

10 (b) Enlargement. When by these rules or by a notice given thereunder or by order of the court  
11 an act is required or allowed to be done at or within a specified time, the court for cause shown  
12 may at any time in its discretion (1) with or without motion or notice order the period enlarged if  
13 request therefor is made before the expiration of the period originally prescribed or as extended  
14 by a previous order or (2) upon motion made after the expiration of the specified period permit  
15 the act to be done where the failure to act was the result of excusable neglect; but it may not  
16 extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), and 60(b),  
17 except to the extent and under the conditions stated in them.

18 (c) Unaffected by expiration of term. The period of time provided for the doing of any act or  
19 the taking of any proceeding is not affected or limited by the continued existence or expiration of  
20 a term of court. The continued existence or expiration of a term of court in no way affects the  
21 power of a court to do any act or take any proceeding in any civil action which has been pending  
22 before it.

23 (d) For motions - Affidavits. A written motion, other than one which may be heard ex parte,  
24 and notice of the hearing thereof shall be served not later than 5 days before the time specified  
25 for the hearing, unless a different period is fixed by these rules, by CJA 4-501, or by order of the  
26 court. Such an order may for cause shown be made on ex parte application. When a motion is  
27 supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise  
28 provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the  
29 hearing, unless the court permits them to be served at some other time.

30 (e) Additional time after service by mail. Whenever a party has the right or is required to do  
31 some act or take some proceedings within a prescribed period after the service of a notice or  
32 other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added  
33 to the end of the prescribed period as calculated under subsection (a). Saturdays, Sundays and  
34 legal holidays shall be included in the computation of any 3-day period under this subsection,  
35 except that if the last day of the 3-day period is a Saturday, a Sunday, or a legal holiday, the  
36 period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

37 Advisory Committee Note: ~~The 1999 amendment to subdivision (a) conforms the state rule~~  
38 ~~to the federal rule. The amendment also makes it clear that weekends and holidays will be~~  
39 ~~included in the computation of time only if the relevant period, including the three day mailing~~  
40 ~~period under subsection (e), is 11 days or more. The 2000 amendment attempts to clarify the~~  
41 ~~interplay between Rules 6(a) and 6(e) by providing that the three extra days of response time that~~  
42 ~~are added under Rule 6(e) following service of a paper by mail are not counted when~~  
43 ~~determining whether to exclude weekends and holidays from the response time under Rule 6(a).~~  
44 This approach is consistent with the approach taken by the majority of federal courts that have  
45 interpreted the corresponding provisions of Rule 6 of the Federal Rules of Civil Procedure.

1 Rule 13. Counterclaim and cross-claim.

2 (a) Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at  
3 the time of serving the pleading the pleader has against any opposing party, if it arises out of the  
4 transaction or occurrence that is the subject-matter of the opposing party's claim and does not  
5 require for its adjudication the presence of third parties of whom the court cannot acquire  
6 jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced  
7 the claim was the subject of another pending action, or (2) the opposing party brought suit upon  
8 his claim by attachment or other process by which the court did not acquire jurisdiction to render  
9 a personal judgment on that claim, and the pleader is not stating any counterclaim under this  
10 Rule 13.

11 (b) Permissive counterclaim. A pleading may state as a counterclaim any claim against an  
12 opposing party not arising out of the transaction or occurrence that is the subject-matter of the  
13 opposing party's claim.

14 (c) Counterclaim exceeding opposing claim. A counterclaim may or may not diminish or  
15 defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or  
16 different in kind from that sought in the pleading of the opposing party.

17 (d) Counterclaim maturing or acquired after pleading. A claim which either matured or was  
18 acquired by the pleader after serving his pleading may, with the permission of the court, be  
19 presented as a counterclaim by supplemental pleading.

20 (e) Omitted counterclaim. When a pleader fails to set up a counterclaim through oversight,  
21 inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the  
22 counterclaim by amendment.

23 (f) Cross-claim against co-party. A pleading may state as a cross-claim any claim by one  
24 party against a co-party arising out of the transaction or occurrence that is the subject-matter  
25 either of the original action or of a counterclaim therein or relating to any property that is the  
26 subject-matter of the original action. Such cross-claim may include a claim that the party against  
27 whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in  
28 the action against the cross-claimant.

29 (g) Additional parties may be brought in. When the presence of parties other than those to  
30 the original action is required for the granting of complete relief in the determination of a  
31 counterclaim or cross-claim, the court shall order them to be brought in as defendants as  
32 provided in these rules, if jurisdiction of them can be obtained.

33 (h) Separate judgments. Judgment on a counterclaim or cross-claim may be rendered in  
34 accordance with the terms of Rule 54(b), even if the claims of the opposing party have been  
35 dismissed or otherwise disposed of.

36 (i) Cross demands not affected by assignment or death. When cross demands have existed  
37 between persons under such circumstances that, if one had brought an action against the other, a  
38 counterclaim could have been set up, the two demands shall be deemed compensated so far as  
39 they equal each other, and neither can be deprived of the benefit thereof by the assignment or  
40 death of the other, except as provided in Subdivision (j) of this rule.

41 (j) Claims against assignee. Except as otherwise provided by law as to negotiable  
42 instruments and assignments of accounts receivable, any claim, counterclaim, or cross-claim  
43 which could have been asserted against an assignor at the time of or before notice of such  
44 assignment, may be asserted against his assignee, to the extent that such claim, counterclaim, or  
45 cross-claim does not exceed recovery upon the claim of the assignee.

1       (k) ~~Claim in excess of court's jurisdiction. Where any counterclaim or cross claim or~~  
2 ~~third party claim is filed in an action in a city court or justice's court, and due to its limited~~  
3 ~~jurisdiction, such court does not have the power to grant the relief sought thereby, it shall~~  
4 ~~suspend all proceedings in the entire action and certify the same and transmit all papers therein to~~  
5 ~~the district court of the county in which such inferior court is maintained, upon the payment by~~  
6 ~~the party filing such counterclaim, cross claim or third party claim of the fees required for~~  
7 ~~certifying the record on appeal from such court and for docketing the same in the district court.~~  
8 ~~The fees herein required to be paid, shall be deposited with the clerk of the inferior court at the~~  
9 ~~time of filing such counterclaim, cross claim, or third party claim. For failure so to do, the court~~  
10 ~~may, upon motion of the adverse party, after notice, strike such counterclaim, cross claim, or~~  
11 ~~third party claim.~~

12       ~~In any action so certified to the district court, when any responsive pleading is required or~~  
13 ~~permitted or a motion is allowed under these rules, the time in which such responsive pleading or~~  
14 ~~motion shall be made shall commence to run from the time notice of the filing of the cause in the~~  
15 ~~district court shall be served on the party making such responsive pleading or motion.~~

16       ~~Advisory Committee Note: Inasmuch as a question may arise as to whether a counterclaim~~  
17 ~~or other similar pleading is within the jurisdiction of the city or justice's court, it was deemed~~  
18 ~~necessary by the committee to leave it to the court's discretion whether such pleading should be~~  
19 ~~stricken or the party filing the same allowed to deposit the necessary cost after hearing upon~~  
20 ~~notice.~~

21       Rule 47. Jurors.

22       (a) Examination of jurors. The court may permit the parties or their attorneys to conduct the  
23 examination of prospective jurors or may itself conduct the examination. In the latter event, the  
24 court shall permit the parties or their attorneys to supplement the examination by such further  
25 inquiry as is material and proper or shall itself submit to the prospective jurors such additional  
26 questions of the parties or their attorneys as is material and proper. Prior to examining the jurors,  
27 the court may make a preliminary statement of the case. The court may permit the parties or their  
28 attorneys to make a preliminary statement of the case, and notify the parties in advance of trial.

29       (b) Alternate jurors. The court may direct that ~~jurors in addition to the regular panel be called~~  
30 ~~and impanelled to sit as~~ alternate jurors be impaneled. Alternate jurors, in the order in which they  
31 are called, shall replace jurors who, prior to the time the jury retires to consider its verdict,  
32 become unable or disqualified to perform their duties. Alternate jurors shall be ~~drawn~~ selected at  
33 the same time and in the same manner, shall have the same qualifications, shall be subject to the  
34 same examination and challenges, shall take the same oath, and shall have the same functions,  
35 powers, ~~facilities,~~ and privileges as the principal jurors. An alternate juror who does not replace a  
36 principal juror shall be discharged ~~after~~ when the jury retires to consider its verdict unless the  
37 parties stipulate otherwise and the court approves the stipulation. The court may withhold from  
38 the jurors the identity of the alternate jurors until the jurors begin deliberations. If one or two  
39 alternate jurors are called, each party is entitled to one peremptory challenge in addition to those  
40 otherwise allowed. ~~The additional peremptory challenge may be used only against an alternate~~  
41 ~~juror, and the other peremptory challenges allowed by law shall not be used against the~~  
42 ~~alternates.~~

43       (c) Challenge defined; by whom made. A challenge is an objection made to the trial jurors  
44 and may be directed (1) to the panel or (2) to an individual juror. Either party may challenge the

1 jurors, but where there are several parties on either side, they must join in a challenge before it  
2 can be made.

3 (d) Challenge to panel; time and manner of taking; proceedings. A challenge to the panel can  
4 be founded only on a material departure from the forms prescribed in respect to the drawing and  
5 return of the jury, or on the intentional omission of the proper officer to summon one or more of  
6 the jurors drawn. It must be taken before a juror is sworn. It must be in writing or be stated on  
7 the record, and must specifically set forth the facts constituting the ground of challenge. If the  
8 challenge is allowed, the court must discharge the jury so far as the trial in question is concerned.

9 (e) Challenges to individual jurors; number of peremptory challenges. The challenges to  
10 individual jurors are either peremptory or for cause. Each party shall be entitled to three  
11 peremptory challenges, except as provided under Subdivisions (b) and (c) of this rule.

12 (f) Challenges for cause; ~~how tried. Challenges for cause may be taken on one or more of the~~  
13 following grounds: A challenge for cause is an objection to a particular juror and shall be heard  
14 and determined by the court. The juror challenged and any other person may be examined as a  
15 witness on the hearing of such challenge. A challenge for cause may be taken on one or more of  
16 the following grounds. On its own motion the court may remove a juror upon the same grounds.

17 (1) A want of any of the qualifications prescribed by law to render a person competent as a  
18 juror.

19 (2) Consanguinity or affinity within the fourth degree to either party, or to an officer of a  
20 corporation that is a party.

21 (3) Standing in the relation of debtor and creditor, guardian and ward, master and servant,  
22 employer and employee or principal and agent, to either party, or united in business with either  
23 party, or being on any bond or obligation for either party; provided, that the relationship of  
24 debtor and creditor shall be deemed not to exist between a municipality and a resident thereof  
25 indebted to such municipality by reason of a tax, license fee, or service charge for water, power,  
26 light or other services rendered to such resident.

27 (4) Having served as a juror, or having been a witness, on a previous trial between the same  
28 parties for the same cause of action, or being then a witness therein.

29 (5) Pecuniary interest on the part of the juror in the result of the action, or in the main  
30 question involved in the action, except his interest as a member or citizen of a municipal  
31 corporation.

32 ~~(6) That a state of mind exists on the part of the juror with reference to the cause, or to either~~  
33 ~~party, which will prevent him from acting impartially and without prejudice to the substantial~~  
34 ~~rights of the party challenging; but no person shall be disqualified as a juror by reason of having~~  
35 ~~formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded~~  
36 ~~upon public rumor, statements in public journals or common notoriety, if it satisfactorily appears~~  
37 ~~to the court that the juror can and will, notwithstanding such opinion, act impartially and fairly~~  
38 ~~upon the matter to be submitted to him.~~

39 (6) Conduct, responses, state of mind or other circumstances that reasonably lead the court to  
40 conclude the juror is not likely to act impartially. No person may serve as a juror, if challenged,  
41 unless the judge is convinced the juror can and will act impartially and fairly.

42 ~~Any challenge for cause shall be tried by the court. The juror challenged, and any other~~  
43 ~~person, may be examined as a witness on the trial of such challenge.~~

1 (g) Selection of jury. The judge shall determine the method of selecting the jury and notify  
2 the parties at a pretrial conference or otherwise prior to trial. The following methods for selection  
3 are not exclusive.

4 (1) ~~Strike and replace method. The clerk shall draw by lot and call court shall summon the~~  
5 number of jurors that are to try the cause plus such an additional number as will allow for any  
6 alternates, for all peremptory challenges permitted, and for all challenges for cause that may be  
7 granted. At the direction of the judge, the clerk shall call jurors in random order. The judge may  
8 hear and determine challenges for cause during the course of questioning or at the end thereof.  
9 The judge may and, at the request of any party, shall hear and determine challenges for cause  
10 outside the hearing of the jurors. After each challenge for cause sustained, another juror shall be  
11 called to fill the vacancy before further challenges are made, and any such new juror may be  
12 challenged for cause. When the challenges for cause are completed, the clerk shall make provide  
13 a list of the jurors remaining, in the order called, and each side, beginning with the plaintiff, shall  
14 indicate thereon its peremptory challenge to one juror at a time in regular turn until all  
15 peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or  
16 so many of them as shall be necessary to constitute the jury, in the order in which they appear on  
17 the list, including any alternate jurors, and the persons whose names are so called shall constitute  
18 the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless  
19 otherwise ordered by the court prior to voir dire.

20 (2) Struck method. The court shall summon the number of jurors that are to try the cause plus  
21 such an additional number as will allow for any alternates, for all peremptory challenges  
22 permitted and for all challenges for cause that may be granted. At the direction of the judge, the  
23 clerk shall call jurors in random order. The judge may hear and determine challenges for cause  
24 during the course of questioning or at the end thereof. The judge may and, at the request of any  
25 party, shall hear and determine challenges for cause outside the hearing of the jurors. When the  
26 challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and  
27 each side, beginning with the plaintiff, shall indicate thereon its peremptory challenge to one  
28 juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk  
29 shall then call the remaining jurors, or so many of them as shall be necessary to constitute the  
30 jury, including any alternate jurors, and the persons whose names are so called shall constitute  
31 the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless  
32 otherwise ordered by the court prior to voir dire.

33 (3) In courts using lists of prospective jurors generated in random order by computer, the  
34 clerk may call the jurors in that random order.

35 (h) Oath of jury. As soon as the jury is completed an oath must be administered to the jurors,  
36 in substance, that they and each of them will well and truly try the matter in issue between the  
37 parties, and a true verdict rendered according to the evidence and the instructions of the court.

38 (i) ~~Proceedings when juror discharged. If, after the impanelling of impaneling the jury and~~  
39 before verdict, a juror becomes unable or disqualified to perform his duty the duties of a juror  
40 and there is no alternate juror, the parties may agree to proceed with the other jurors, or to swear  
41 a new juror and commence the trial anew. If the parties do not so agree the court shall discharge  
42 the jury and the case shall be tried with a new jury.

43 (j) View by jury. When in the opinion of the court it is proper for the jury to have a view of  
44 the property which is the subject of litigation, or of the place in which any material fact occurred,  
45 it may order them to be conducted in a body under the charge of an officer to the place, which

1 shall be shown to them by some person appointed by the court for that purpose. While the jury  
2 are thus absent no person other than the person so appointed shall speak to them on any subject  
3 connected with the trial.

4 (k) Separation of jury. If the jurors are permitted to separate, either during the trial or after  
5 the case is submitted to them, they shall be admonished by the court that it is their duty not to  
6 converse with, or suffer themselves to be addressed by, any other person on any subject of the  
7 trial, and that it is their duty not to form or express an opinion thereon until the case is finally  
8 submitted to them.

9 (l) Deliberation of jury. When the case is finally submitted to the jury they may decide in  
10 court or retire for deliberation. If they retire they must be kept together in some convenient place  
11 under charge of an officer until they agree upon a verdict or are discharged, unless otherwise  
12 ordered by the court. Unless by order of the court, the officer having ~~them under his charge must~~  
13 ~~not suffer charge of them must not make or allow to be made~~ any communication to ~~be made to~~  
14 ~~them, or make any himself, them with respect to the action,~~ except to ask them if they have  
15 agreed upon their verdict, and ~~he the officer~~ must not, before the verdict is rendered,  
16 communicate to any person the state of ~~their~~ deliberations or the verdict agreed upon.

17 (m) ~~Papers taken by jury. Exhibits taken by jury; notes.~~ Upon retiring for deliberation the  
18 jury may take with them the instructions of the court and all exhibits ~~and all papers~~ which have  
19 been received as evidence in the cause, except ~~depositions or copies of such papers exhibits~~ as  
20 ~~ought that should not, in the opinion of the court, to be taken from the person having them in~~  
21 ~~possession; and they may also take with them notes of the testimony or other proceedings on the~~  
22 ~~trial taken by themselves or any of them, but none taken by any other person in the possession of~~  
23 ~~the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury~~  
24 ~~to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those~~  
25 ~~notes with them during deliberations. As necessary, the court shall provide jurors with writing~~  
26 ~~materials and instruct the jury on taking and using notes.~~

27 (n) Additional instructions of jury. After the jury have retired for deliberation, if there is a  
28 disagreement among them as to any part of the testimony, or if they desire to be informed on any  
29 point of law arising in the cause, they may require the officer to conduct them into court. Upon  
30 their being brought into court the information required must be given in the presence of, or after  
31 notice to, the parties or counsel. Such information must be given in writing or stated on the  
32 record.

33 (o) New trial when no verdict given. If a jury is discharged or prevented from giving a  
34 verdict for any reason, the action shall be tried anew.

35 (p) Court deemed in session pending verdict; verdict may be sealed. While the jury is absent  
36 the court may be adjourned from time to time in respect to other business, but it shall be open for  
37 every purpose connected with the cause submitted to the jury, until a verdict is rendered or the  
38 jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the  
39 court, in case of an agreement during a recess or adjournment for the day.

40 (q) Declaration of verdict. When the jury or three-fourths of them, or such other number as  
41 may have been agreed upon by the parties pursuant to Rule 48, have agreed upon a verdict they  
42 must be conducted into court, their names called by the clerk, and the verdict rendered by their  
43 ~~foreman; foreperson;~~ the verdict must be in writing, signed by the ~~foreman, foreperson,~~ and must  
44 be read by the clerk to the jury, and the inquiry made whether it is their verdict. Either party may  
45 require the jury to be polled, which shall be done by the court or clerk asking each juror if it is

1 his the juror's verdict. If, upon such inquiry or polling there is an insufficient number of jurors  
2 agreeing therewith, the jury must be sent out again; otherwise the verdict is complete and the  
3 jury shall be discharged from the cause.

4 (r) Correction of verdict. If the verdict rendered is informal or insufficient, it may be  
5 corrected by the jury under the advice of the court, or the jury may be sent out again.

6 Advisory Committee Note: Paragraph (a) The preliminary statement of the case does not  
7 serve the same purpose as the opening statement presented after the jury is selected. The  
8 preliminary statement of the case serves only to provide a brief context in which the jurors might  
9 more knowledgeably answer questions during voir dire. A preliminary opening statement is not  
10 required and may serve no useful purpose in short trials or trials with relatively simple issues.  
11 The judge should be particularly attuned to prevent argument or posturing at this early stage of  
12 the trial.

13 Paragraph (f)(6). The Utah Supreme Court has noted a tendency of trial court judges to rule  
14 against a challenge for cause in the face of legitimate questions about a juror's biases. The  
15 Supreme Court limited the following admonition to capital cases, but it is a sound philosophy  
16 even in trials of lesser consequence.

17 [W]e take this opportunity to address an issue of growing concern to this court. We are  
18 perplexed by the trial courts' frequent insistence on passing jurors for cause in death  
19 penalty cases when legitimate concerns about their suitability have been raised during  
20 voir dire. While the abuse-of-discretion standard of review affords trial courts wide  
21 latitude in making their for-cause determinations, we are troubled by their tendency to  
22 "push the edge of the envelope," especially when capital voir dire panels are so large and  
23 the death penalty is at issue. Moreover, capital cases are extremely costly, in terms of  
24 both time and money. Passing questionable jurors increases the drain on the state's  
25 resources and jeopardizes an otherwise valid conviction and/or sentence. ... If a party  
26 raises legitimate questions as to a potential juror's beliefs, biases, or physical ability to  
27 serve, the potential juror should be struck for cause, even where it would not be legally  
28 erroneous to refuse. State v. Carter, 888 P.2d 629 (Utah 1995).

29 In determining challenges for cause, the task of the judge is to find the proper balance. It is  
30 not the judge's duty to seat a jury from a too-small venire panel or to seat a jury as quickly as  
31 possible. Although thorough questioning of a juror to determine the existence, nature and extent  
32 of a bias is appropriate, it is not the judge's duty to extract the "right" answer from or to  
33 "rehabilitate" a juror. The judge should accept honest answers to understood questions and,  
34 based on that evidence, make the sometimes difficult decision to seat only those jurors the judge  
35 is convinced will act fairly and impartially. This higher duty demands a sufficient venire panel  
36 and sufficient voir dire. The trial court judge enjoys considerable discretion in limiting voir dire  
37 when there is no apparent link between a question and potential bias, but "when proposed voir  
38 dire questions go directly to the existence of an actual bias, that discretion disappears. The trial  
39 court must allow such inquiries." The court should ensure the parties have a meaningful  
40 opportunity to explore grounds for challenges for cause and to ask follow-up questions, either  
41 through direct questioning or questioning by the court.

42 The objective of a challenge for cause is to remove from the venire panel persons who cannot  
43 act impartially in deliberating upon a verdict. The lack of impartiality may be due to some bias  
44 for or against one of the parties; it may be due to an opinion about the subject matter of the  
45 action or about the action itself. The civil rules of procedure have a few - and the criminal rules



1 many more - specific circumstances, usually a relationship with a party or a circumstance of the  
2 juror, from which the bias of the juror is inferred. In addition to these enumerated grounds for a  
3 challenge for cause, both the civil rules and the criminal rules close with the following grounds:  
4 formulation by the juror of a state of mind that will prevent the juror from acting impartially.  
5 However, the rules go on to provide that no person shall be disqualified as a juror by reason of  
6 having formed an opinion upon the matter if it satisfactorily appears to the court that the person  
7 will, notwithstanding that opinion, act impartially.

8 The amendments focus on the “state of mind” clause. In determining whether a person can  
9 act impartially, the court should focus not only on that person’s state of mind but should consider  
10 the totality of the circumstances. These circumstances might include the experiences, conduct,  
11 statements, opinions, or associations of the juror. Rather than determining that the juror is  
12 “prevented” from acting impartially, the court should determine whether the juror “is not likely  
13 to act impartially.” These amendments conform to the directive of the Supreme Court: If there is  
14 a legitimate question about the ability of a person to act impartially, the court should remove that  
15 person from the panel.

16 There is no need to modify this determination with the statement that a juror who can set  
17 aside an opinion based on public journals, rumors or common notoriety and act impartially  
18 should not be struck. Having read or heard of the matter and even having an opinion about the  
19 matter do not meet the standard of the rule. Well-informed and involved citizens are not  
20 automatically to be disqualified from jury service. Sound public policy supports knowledgeable,  
21 involved citizens as jurors. The challenge for the court is to evaluate the impact of this extra-  
22 judicial information on the ability of the person to act impartially. Information and opinions  
23 about the case remain relevant to but not determinative of the question: “Will the person be a fair  
24 and impartial juror?”

25 In stating that no person may serve as a juror unless the judge is “convinced” the juror will  
26 act impartially, the Committee uses the term “convinced” advisedly. The term is not intended to  
27 suggest the application of a clear and convincing standard of proof in determining juror  
28 impartiality, such a high standard being contrary to the Committee’s objectives. Nor is the term  
29 intended to undermine the long-held presumption that potential jurors who satisfy the basic  
30 requirements imposed by statutes and rules are qualified to serve. Rather, the term is intended to  
31 encourage the trial judge to be thorough and deliberative in evaluating challenges for cause.  
32 Although not an evidentiary standard at all, the term “convinced” implies a high standard for  
33 judicial decision-making. Review of the decision should remain limited to an abuse of discretion.

34 This new standard for challenges for cause represents a balance more easily stated than  
35 achieved. These amendments encourage judges to exercise greater care in evaluating challenges  
36 for cause and to resolve legitimate doubts in favor of removal. This may mean some jurors now  
37 removed by peremptory challenge will be removed instead for cause. It may also mean the court  
38 will have to summon more prospective jurors for voir dire. Whether lawyers will use fewer  
39 peremptory challenges will have to await the judgment of experience.

40 Paragraph (m). The committee recommends amending paragraph (m) to establish the right of  
41 jurors to take notes and to have those notes with them during deliberations. The committee  
42 recommends removing depositions from the paragraph not in order to permit the jurors to have  
43 depositions but to recognize that depositions are not evidence. Depositions read into evidence  
44 will be treated as any other oral testimony. These amendments and similar amendments to the  
45 Rules of Criminal Procedure will make the two provisions identical.

1 Rule 51. Instructions to jury; objections.

2 (a) Preliminary instructions. After the jury is sworn and before opening statements, the court  
3 may instruct the jury concerning the jurors' duties and conduct, the order of proceedings, the  
4 elements and burden of proof for the cause of action, and the definition of terms. The court may  
5 instruct the jury concerning any matter stipulated to by the parties and agreed to by the court and  
6 any matter the court in its discretion believes will assist the jurors in comprehending the case.  
7 Preliminary instructions shall be in writing and a copy provided to each juror. At the final  
8 pretrial conference or at such other time as the court directs, a party may file a written request  
9 that the court instruct the jury on the law as set forth in the request. The court shall inform the  
10 parties of its action upon a requested instruction prior to instructing the jury, and it shall furnish  
11 the parties with a copy of its proposed instructions, unless the parties waive this requirement.

12 (b) Interim written instructions. During the course of the trial, the court may instruct the jury  
13 on the law if the instruction will assist the jurors in comprehending the case. Prior to giving the  
14 written instruction, the court shall advise the parties of its intent to do so and of the content of the  
15 instruction. A party may request an interim written instruction.

16 (c) Final instructions. At the close of the evidence or at such earlier time as the court  
17 reasonably directs, any party may file written requests that the court instruct the jury on the law  
18 as set forth in said requests. The court shall inform counsel of its proposed action upon the  
19 requests prior to instructing the jury; and it shall furnish counsel with a copy of its proposed  
20 instructions, unless the parties stipulate that such instructions may be given orally or otherwise  
21 waive this requirement. Final instructions shall be in writing and at least one copy provided to  
22 the jury. The court shall provide a copy to any juror who requests one and may, in its discretion,  
23 provide a copy to all jurors.

24 (d) Objections to instructions. ~~If the instructions are to be given in writing, all objections~~  
25 ~~thereto must~~ Objections to written instructions shall be made before the instructions are given to  
26 the jury; otherwise, objections. Objections to oral instructions may be made to the instructions  
27 after they are given to the jury, but before the jury retires to consider its verdict. The court shall  
28 provide an opportunity to make objections outside the hearing of the jury. No party may assign  
29 as error the giving or the failure to give an instruction unless he objects thereto. Unless a party  
30 objects to an instruction or the failure to give an instruction, the instruction may not be assigned  
31 as error except to avoid a manifest injustice. In objecting to the giving of an instruction, a party  
32 must state distinctly shall identify the matter to which he objects the objection is made and the  
33 grounds for his the objection. Notwithstanding the foregoing requirement, the appellate court, in  
34 its discretion and in the interests of justice, may review the giving of or failure to give an  
35 instruction. Opportunity shall be given to make objections, and they shall be made out of the  
36 hearing of the jury.

37 (e) Arguments. Arguments for the respective parties shall be made after the court has  
38 ~~instructed~~ given the jury its final instructions. The court shall not comment on the evidence in  
39 the case, and if the court states any of the evidence, it must instruct the jurors that they are the  
40 exclusive judges of all questions of fact.

41 Rule 64D. Garnishment.

42 (a) Availability of writ of garnishment (pre-judgment and after judgment). Except as  
43 provided in Rule 64A and as authorized and permitted therein a writ of garnishment is available  
44 as provided for herein.

1 (i) Before judgment. A writ of garnishment is available as a means of attachment before  
2 judgment, other than for defendant's earnings from personal services as hereinafter defined in  
3 Subdivision (d)(vii), at any time after the filing of a complaint in cases in which a writ of  
4 attachment is available under Rule 64C.

5 (ii) After judgment or order. A writ of garnishment is available in aid of execution to satisfy  
6 a money judgment or other order requiring the payment of money. Such judgments and orders  
7 are hereinafter sometimes referred to collectively as "judgment".

8 (iii) Property subject to garnishment. The property subject to garnishment that a writ may be  
9 used to levy upon or affect is all the accrued credits, chattels, goods, effects, debts, choses in  
10 action, money and other personal property and rights to property of the defendant in the  
11 possession of a third person, or under the control or constituting a performance obligation to the  
12 defendant of any third person, whether due or yet to become due at the time of service of the writ  
13 of garnishment, which are not exempt from garnishment or exempt under any applicable  
14 provisions of state or federal law (hereinafter sometimes referred to as "Property Subject to  
15 Garnishment").

16 (iv) As used in this Rule 64D, the term "plaintiff" means the person or entity seeking by  
17 garnishment to attach or execute upon the property of another subject to garnishment and the  
18 term "defendant" means the person or entity whose property subject to garnishment is sought to  
19 be attached or executed upon by the plaintiff.

20 (b) Requirements for issuance of a prejudgment writ of garnishment. The clerk shall issue a  
21 prejudgment writ or writs of garnishment, with or without notice to the defendant, directed to the  
22 person(s) sought to be charged as garnishee(s) and so identified in the affidavit required by  
23 Subdivision (b)(i) herein only upon the order of the court in which the action is filed. Several  
24 writs may be issued at the same time so long as there is only one named garnishee in a single  
25 writ. No writ shall issue unless there is attached thereto the fee required by Subdivision (d)(ii).  
26 Subject to Rule 64A, the court shall issue its order for the issuance of a prejudgment writ of  
27 garnishment only upon the occurrence of the following:

28 (i) A finding that the plaintiff has filed with the clerk an affidavit briefly setting forth:  
29 admissible evidence of facts showing that plaintiff's claim is one for which attachment is  
30 authorized by Rule 64C; the amount due the plaintiff for which the complaint seeks judgment;  
31 that plaintiff has good reason to believe and does believe that defendant has Property Subject to  
32 Garnishment in the possession or in the control of or otherwise owing from one or more  
33 specified third persons who plaintiff seeks to charge as garnishees or that such third persons  
34 plaintiff seeks to charge as garnishees are otherwise indebted to the defendant; and that such  
35 Property Subject to Garnishment is not earnings for the personal services of the defendant, or  
36 otherwise exempt from garnishment.

37 (ii) A finding that plaintiff has filed with the clerk a bond or undertaking in the form and  
38 amount required for the issuance of a writ of attachment.

39 (iii) Exceptions to the sufficiency of the sureties on plaintiff's prejudgment garnishment bond  
40 or undertaking and the justification of such sureties shall be made within the times and in the  
41 manner and with the effect provided in Rule 64C(c).

42 (c) Requirements for issuance of writ of garnishment after judgment or other order. After  
43 the entry of a judgment or other order requiring the payment of money, the clerk of any court  
44 from which execution thereon may be issued shall issue a writ or writs of garnishment, without  
45 the necessity for an undertaking, upon the filing of an application by the plaintiff: (i) identifying

1 the person sought to be charged as a garnishee; (ii) stating whether such property consists in  
2 whole or in part of earnings from personal services as hereinafter defined in Subdivision (d)(vii)  
3 of this rule and (iii) stating the remaining amount due on the judgment. Several writs may be  
4 issued at the same time so long as there is only one named garnishee in a single writ. No writ  
5 shall issue unless there is attached thereto the fee required by Subdivision (d)(ii).

6 (d) Content and effect of writ; to whom directed (pre-judgment or after judgment).

7 (i) The writ of garnishment shall be issued in the name of the State of Utah and shall be  
8 directed to the person or persons designated in the plaintiff's affidavit or application as garnishee  
9 or garnishees, advising each such person that each is attached as garnishee in the action, and  
10 commanding each of them not to pay or deliver any non-exempt Property Subject to  
11 Garnishment as defined in Subdivision (a)(iii) herein in their possession, custody or control, or  
12 part thereof, due or to become due to the defendant up to the amount remaining due on the  
13 judgment (Subdivision (c)(iii)) if the writ is issued after judgment or the amount claimed to be  
14 due the plaintiff (Subdivision (b)(i)) if a prejudgment writ is issued, whichever is applicable, and  
15 to retain possession and control of all such property until further order of the court or as  
16 otherwise discharged or released as provided for herein. In the case of a prejudgment writ, the  
17 writ shall contain a designation that it is a prejudgment writ and further note the date and time of  
18 expiration of the writ. At the time the writ of garnishment is issued, the clerk shall attach to the  
19 writ a notice of garnishment and exemptions, interrogatories to the garnishee and two copies of  
20 an application by which the defendant may request a hearing.

21 (ii) The writ shall require the garnishee to give answers to interrogatories within five (5)  
22 business days from the date of service of the writ. Service of a copy of the answers to  
23 interrogatories shall be made upon the plaintiff and the original filed with the clerk. The plaintiff  
24 shall provide a fee to the garnishee in an amount set by the Legislature. The interrogatories may  
25 in substance inquire: (1) whether the garnishee is indebted to the defendant, either in property or  
26 in money, whether the same is now due and, if not, when it is to become due; (2) whether there is  
27 any Property Subject to Garnishment in the possession, custody or control of the garnishee and,  
28 if so, the value of the same; (3) whether the garnishee knows of any debts owing to the  
29 defendant, whether due or not, or of any Property Subject to Garnishment belonging to the  
30 defendant or in which defendant has an interest, whether in the possession or under the control of  
31 the garnishee or another, and, if so, the particulars thereof; (4) whether the garnishee is retaining  
32 or deducting any amount in satisfaction of a claim the garnishee has against the plaintiff or the  
33 defendant, a designation as to whom such claim relates, and the amount retained or deducted;  
34 and (5) as to any other relevant information plaintiff may desire, including defendant's job,  
35 position or occupation, defendant's rate and method of compensation, defendant's pay period and  
36 the computation of the amount of defendant's accrued disposable earnings attached by the writ.

37 (iii) If the garnishee has possession, custody or control of Property Subject to Garnishment,  
38 the garnishee shall serve within five (5) business days of service of the writ of garnishment upon  
39 the garnishee a copy of the writ of garnishment, answers to interrogatories, notice of garnishment  
40 and exemptions, and two copies of an application by which a hearing may be requested, upon:  
41 (1) the defendant at the last known address of the defendant shown on the records of the  
42 garnishee at the time the writ of garnishment was served on the garnishee; and (2) upon any  
43 other person shown upon the records of the garnishee to be a co-owner or having an interest in  
44 the property or money garnished at the last known address of the co-owner or other interested  
45 person as shown on the records of the garnishee at the time the writ of garnishment was served

1 on the garnishee. If that which is garnisheed is an account, such as a bank account or the like, the  
2 copies of the writ of garnishment, answers to interrogatories, notice of garnishment and  
3 exemptions, and applications for hearing shall be served at the addresses maintained in the  
4 records of the garnishee for that account. Service shall be by first class mail or by hand delivery  
5 to the defendant and all others. In the answer to interrogatories, the garnishee shall state that the  
6 garnishee has mailed or hand delivered a copy of the writ of garnishment, answers to  
7 interrogatories, notice of garnishment and exemptions, and two copies of an application by  
8 which a hearing may be requested to the defendant and all other persons entitled thereto and state  
9 the manner and date of compliance therewith.

10 (iv) The notice of garnishment and exemptions that is to be served upon the defendant and  
11 others entitled to its receipt shall indicate in substance that certain money is exempt from  
12 garnishment including but not limited to, Social Security benefits, Supplemental Security Income  
13 benefits, Veterans' benefits, unemployment benefits, Workers' Compensation benefits, public  
14 assistance (welfare), alimony, child support, certain pensions, and part or all of wages or other  
15 earnings from personal services. The notice shall also indicate that the defendant or other person  
16 notified must request a hearing within ten days from the date of service of the notice upon the  
17 defendant or other person, but in no case later than the time at which the court orders the  
18 disposition of the Property Subject to Garnishment provided for herein, which shall not be  
19 sooner than ten (10) days from the service of the notice, if such defendant or other person desires  
20 to claim any exemption that has not already been reflected in the answers to interrogatories,  
21 believes that the writ of garnishment was issued improperly, or that the answers to  
22 interrogatories are inaccurate. For purposes of this provision, the date of service shall be the date  
23 of mailing, if mailed, or date of delivery, if hand-delivered, and no period for mailing (Rule 6(e))  
24 shall be used in computing the time period.

25 (v) Priority among writs of garnishment served upon a garnishee shall be in order of their  
26 service.

27 (vi) A writ of garnishment attaching earnings for personal services shall attach only that  
28 portion of the defendant's accrued and unpaid disposable earnings hereinafter specified. The writ  
29 shall so advise the garnishee and shall direct the garnishee to withhold from the defendant's  
30 accrued disposable earnings only the amount attached pursuant to the writ. Earnings for personal  
31 services shall be deemed to accrue on the last day of the period in which they were earned or to  
32 which they relate. If the writ is served before or on the date the defendant's earnings accrue and  
33 before the same have been paid to the defendant, the writ shall be deemed to have been served at  
34 the time the periodic earnings accrued;

35 (vii) "Earnings" or "earnings from personal services" means compensation paid or payable  
36 for personal services, whether denominated as wages, salary, commission, bonus, or otherwise,  
37 and includes periodic payments pursuant to a pension or retirement program. "Disposable  
38 earnings" means that part of a defendant's earnings remaining after the deduction of all amounts  
39 required by law to be withheld. For purposes of a garnishment to enforce payment of a judgment  
40 arising out of a failure to support dependent children, earnings also include, in addition to those  
41 items listed above, periodic payments pursuant to insurance policies of any type, including  
42 unemployment compensation, insurance benefit payments, and all gain derived from capital,  
43 from labor, or from both combined, including profit gained through sale or conversion of capital  
44 assets or as otherwise modified or adopted by law for the support of dependent children.

1 (viii) The maximum portion of the aggregate disposable earnings of defendant (if an  
2 individual) becoming due the defendant which is subject to garnishment is the lesser of:

3 (A) Twenty-five per centum of defendant's disposable earnings (fifty per centum for a  
4 garnishment to enforce payment of a judgment arising out of failure to support dependent  
5 children) computed for the pay period for which the earnings accrued; or

6 (B) The amount by which the defendant's aggregate disposable earnings computed for the  
7 pay period for which the earnings accrued exceeds the number of weeks in the period multiplied  
8 by thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act in  
9 effect at the time the earnings are payable.

10 (ix) Unless otherwise ordered by the Court, the garnishee shall treat the defendant's earnings  
11 becoming due from the garnishee as the defendant's entire aggregate earnings for the purpose of  
12 computing the sum attached by the garnishment.

13 (e) Service of writ; return; general service (pre-judgment or after judgment). The writ, any  
14 order pursuant to subdivision(s) of this rule, and any order pursuant to Rule 64A(3), shall be  
15 served upon the garnishee by a sheriff, constable, deputy, or such other person designated by  
16 court order and return thereof made in the same manner as a return of service upon a summons.  
17 All other service may be by first class mail or hand delivery.

18 (f) Release or discharge of garnishment (pre-judgment or after judgment). At any time  
19 either before or after the service of any writ of garnishment, the defendant may obtain a release  
20 or discharge thereof in the same manner and under the same conditions as a release or discharge  
21 of a writ of attachment may be obtained under the provisions of Subdivision (f) of Rule 64C. The  
22 plaintiff may release a writ of garnishment by filing with the clerk a release of garnishment and  
23 serving a copy thereof upon the garnishee.

24 (g) Answer of garnishee; delivery of property (pre-judgment or after judgment). The  
25 garnishee shall, within the time required by Subdivision (d)(ii) hereof, serve upon the court and  
26 the plaintiff verified answers to the interrogatories and provide proof(s) of service upon  
27 defendant of the copy of the writ of garnishment, answers to interrogatories, the notice of  
28 garnishment and exemptions, and the applications by which a hearing may be requested, stating  
29 the manner and date of service. The garnishee may also deliver to the officer serving the writ the  
30 Property Subject to Garnishment as shown by the answer of the garnishee, and the officer shall  
31 make return of such property and money with the writ to the court, to be dealt with as thereafter  
32 ordered by the court. Thereupon, the garnishee shall be relieved from further liability in the  
33 proceedings, unless the answer shall be successfully controverted as hereinafter provided or the  
34 garnishee has willfully failed to serve copies of the writ of garnishment, answers to  
35 interrogatories, notice of garnishment and exemptions, and the applications by which a request  
36 for a hearing may be made on the defendant and other persons entitled thereto.

37 (h) Procedure (pre-judgment or after judgment). The defendant or any other person who  
38 owns or claims an interest in the property subject to garnishment that is garnisheed may request a  
39 hearing to claim any exemption to the garnishment, or to challenge the issuance of the writ or the  
40 accuracy of the answers to interrogatories. Such request must be filed within ten days of the  
41 service (for purposes of this provision the date of service shall be the date of mailing if mailed or  
42 date of delivery if hand-delivered and no period for mailing pursuant to Rule 6(e) shall be used  
43 in computing the time period) of the copy of the materials required to be served by Subdivision  
44 (d)(iii) upon the defendant and all others entitled to receive the same. ~~A request for hearing filed~~  
45 ~~prior to any request for the issuance of an Order to the garnishee to pay Property Subject to~~

~~Garnishment shall be deemed as timely filed.~~ Any person filing a request for hearing shall serve a copy of the request for hearing on the plaintiff, the garnishee, and other persons claiming an interest in the property. The request for a hearing, ~~which shall be provided by the garnishee to the defendant and other persons~~ shall be in a form to enable the defendant or other person to specify the grounds upon which the defendant or other person challenges the issuance of the writ or the accuracy of the answers to interrogatories, or claims the amount garnisheed to be exempt, in whole or in part, including, but not limited to exemptions claimed for Social Security benefits, Supplemental Security Income benefits, Veterans' benefits, unemployment benefits, Workers' Compensation benefits, public assistance (welfare) benefits, alimony and child support, pensions, wage or other earnings for personal service, and non-ownership of the garnisheed property. Where personal services are compensated, but no amounts are required by law to be withheld, the amounts that would have been required to be withheld by law had the defendant been an employee of the garnishee are exempt.

(i) If no request for hearing is filed. ~~If a request for hearing is not filed as provided for in this Rule and the time for doing so has expired and the writ of garnishment was issued in aid of execution of a judgment or order for the payment of money, then the plaintiff shall be entitled to the Property Subject to Garnishment, or the court shall issue an order to the garnishee to pay the Property Subject to Garnishment that was withheld by the garnishee directly to plaintiff or plaintiff's attorney or as otherwise ordered by the court.~~ If the garnishee does not receive a copy of a request for hearing within 20 days after service of copies of materials required to be served by Subdivision (d)(iii), the garnishee shall pay Property Subject to Garnishment to plaintiff or plaintiff's attorney. If a request for hearing is not filed as provided for in this Rule and the time for doing so has expired and the writ issued was a prejudgment writ of garnishment, then the court or the clerk, upon plaintiff's request, shall issue an order to the garnishee to pay the Property Subject to Garnishment into court by delivery of such property to the sheriff or constable for that purpose. Property Subject to Garnishment that is paid into court pursuant to a prejudgment writ of garnishment or at any time when a request for hearing has been filed shall be held by the clerk pending order of the court.

(ii) Effect of failure to request hearing. If the defendant or any other person to whom the materials required to be served by Subdivision (d)(iii) fails to request a hearing as provided for herein, then defendant and such other persons shall be deemed to have accepted as correct the garnishee's answers to interrogatories and the amounts stated therein to be not exempt from garnishment except as reflected in the answers to interrogatories.

(iii) If a request for hearing is filed. If a request for hearing is filed by or on behalf of the defendant or by any other person, the court shall set the matter for hearing within ten (10) days from the filing of the request and serve notice of that hearing upon all parties and claimants by first class mail. If the court determines at the hearing that the writ was issued improperly, that the answers to interrogatories are inaccurate, or that any assets garnisheed are exempt from or are not subject to garnishment, the court shall immediately issue an order to the garnishee releasing such assets or portion thereof from the writ of garnishment. If the court finds that the assets or a portion thereof are subject to garnishment and not exempt, it shall issue an order to pay the Property Subject to Garnishment directly to plaintiff or plaintiff's attorney or as otherwise ordered by the court, except in the case of a prejudgment writ of garnishment where the order shall require that such property be paid into court by delivery of such property to the sheriff or

1 constable for that purpose. Property Subject to Garnishment that is paid into court shall be held  
2 by the clerk pending order of the court.

3 (iv) If the property is other than money or its equivalent. Where the property is other than  
4 money or its equivalent, the court shall order that the garnishee deliver such property to the  
5 sheriff, constable, deputy, or such other person designated by court order. In the case of a writ  
6 issued after judgment, the person to whom the property was delivered shall sell as much of such  
7 property as may be necessary to satisfy the judgment together with costs of the garnishment  
8 proceedings and deposit the proceeds into court to be distributed by order of the court. Any  
9 surplus of such personal property or the proceeds thereof necessary to satisfy the writ of  
10 garnishment shall be returned to the defendant unless otherwise ordered by a court of competent  
11 jurisdiction. In the case of a prejudgment writ, the person to whom the property is delivered shall  
12 maintain possession of the property until further order of the court.

13 (i) Reply to answer of garnishee; trial of issues; judgment (pre-judgment or after judgment).  
14 The plaintiff or defendant may, within 10 days after the service of any answers to interrogatories,  
15 file and serve upon the garnishee and the other party to the principal action a reply to the whole  
16 or any part thereof and may also allege any matters which would charge the garnishee with  
17 liability except that all claims for exemptions to garnishment or non-ownership of property  
18 garnished shall be resolved under the procedures as otherwise provided for in Subdivision (h)  
19 herein. Such new matter in reply shall be taken as denied and the matter thus at issue shall be  
20 tried in the same manner as other issues of like nature. Judgment shall be entered upon the  
21 verdict or finding the same as if the garnishee had answered according to such verdict or finding.  
22 Costs shall be awarded in accordance with the provisions of Rule 54(d).

23 (j) Proceedings on failure of garnishee to comply with rule (pre-judgment or after judgment).  
24 If a garnishee fails to answer interrogatories after payment of the required fee, or if any garnishee  
25 shall fail to send to the defendant the copy of the writ, answers to interrogatories, notice and  
26 applications required by Sections (d)(iii) of this Rule, the court may order the garnishee to appear  
27 before the court and show cause why the garnishee should not be held in contempt therefor and  
28 why the court should not order the garnishee to pay expenses and costs incurred by other parties  
29 to the proceeding as a result of garnishee's failure. After the garnishee has been personally served  
30 with an order to appear before the court and show cause, the court may make such orders as are  
31 just. Unless the court finds there was substantial justification for the garnishee's failure or that  
32 other circumstances make an award of expenses or costs unjust, the court shall order the  
33 garnishee to pay reasonable expenses, including attorney's fees, incurred as a result of garnishee's  
34 failure.

35 If a garnishee fails to serve upon the court answers to interrogatories or an Affidavit of  
36 Garnishee as to Continuing Garnishment but delivers to the court Property Subject to  
37 Garnishment, the plaintiff may obtain a release of such property by filing with the court 60 days  
38 after the writ of garnishment was issued, or, in the case of a continuing garnishment, 60 days  
39 after the Property Subject to Garnishment was delivered to the court, an Ex Parte Motion to  
40 Release Garnishment Funds and by mailing a copy of the motion to the defendant. The motion  
41 shall state the amount of the property delivered to the court by the garnishee, that the garnishee  
42 failed to answer the interrogatories or file an Affidavit of Garnishee as to Continuing  
43 Garnishment, that 60 days have elapsed since the issuance of the writ (or, in the case of a  
44 continuing garnishment, 60 days have elapsed since the Property Subject to Garnishment was  
45 delivered to the court), and that the defendant has made no objection to the garnishment. No



1 earlier than 10 days after a copy of the motion is mailed to the defendant, the court may enter an  
2 order that the Property Subject to Garnishment shall be released to the plaintiff to be applied to  
3 the judgment against the defendant. If the defendant objects to such release of property, the  
4 defendant shall file an objection to the motion with the court prior to the order being entered and  
5 shall mail a copy of the objection to the plaintiff. The plaintiff shall mail a copy of the executed  
6 order to the defendant.

7 (k) Release of garnishee for amount paid (pre-judgment or after judgment). Except as  
8 provided for herein, a garnishee who acts in accordance with this Rule shall be released from all  
9 demands by the defendant for all Property Subject to Garnishment that is paid, delivered or  
10 accounted for by the garnishee pursuant to this Rule.

11 (l) Interpleader of third persons (pre-judgment or after judgment). When any person other  
12 than the defendant claims or may claim that the property held in the possession, custody, or  
13 control of the garnishee pursuant to a Writ is not subject to garnishment, the court may on  
14 motion order that such claimant be interpleaded as a defendant to the garnishment action, and if  
15 not already subject to the jurisdiction of the court, provide for notice thereof, in such form as the  
16 court shall direct, together with service of a copy of the order upon such third-party claimant in  
17 the manner required for the service of a summons. Thereupon the garnishee may pay or deliver  
18 to the court such property held pursuant to the Writ, which shall be a complete discharge from all  
19 liability to any party for the amount so paid or property so delivered. The third-party claimant  
20 shall thereupon be deemed a defendant to the garnishment action and shall answer within 10  
21 days, setting forth any claim or defense. In case of default, judgment may be rendered as in any  
22 other cases of default which shall extinguish any claim of such third-party claimant.

23 (m) Claims of garnishee against plaintiff or defendant (pre-judgment or after judgment).  
24 Every garnishee shall be allowed to retain or deduct out of the Property Subject to Garnishment  
25 all demands against the plaintiff and against the defendant of which the garnishee could have  
26 availed itself if the garnishee had not been served as garnishee, whether the same are at the time  
27 due or not so long as the claims are liquidated, but only to the extent that the amounts retained  
28 and deducted are applied to reduce a debt or other obligation of the plaintiff or defendant, except  
29 that should such property, otherwise subject to garnishment, be held as security for the payment  
30 of a debt or other obligation of the defendant to the garnishee, then such property need not be  
31 applied at that time but must remain subject to being applied at any time pending the payment in  
32 full of the debt or other obligation. In answering the interrogatories propounded to the garnishee,  
33 the garnishee shall specify the amount retained or deducted and the person against whom the  
34 claim is made. Amounts retained and deducted for amounts owed by the plaintiff to the garnishee  
35 shall also be applied in reduction of any judgment amount rendered in favor of plaintiff and  
36 against defendant. All amounts properly garnisheed in excess of those amounts retained or  
37 deducted pursuant to this subdivision are subject to payment and distribution in accordance with  
38 this Rule.

39 (n) Liability of garnishee on negotiable instruments (pre-judgment or after judgment). No  
40 person shall be liable as garnishee by reason of having drawn, accepted, made or endorsed any  
41 negotiable instrument which is not in the possession, custody, or control of the garnishee at the  
42 time of service of the writ of garnishment.

43 (o) When garnishee is mortgagee or pledgee (pre-judgment or after judgment). When any  
44 Property Subject to Garnishment is mortgaged or pledged, or in any way held for the payment of  
45 a debt to the garnishee, the plaintiff may obtain an order from the court authorizing the plaintiff

1 to pay the total amount of the obligation to the garnishee in accordance with the terms of the  
2 mortgage, pledge or obligation, and requiring the garnishee to deliver such Property Subject to  
3 Garnishment according to the order of the court upon payment to such garnishee of the total  
4 obligation.

5 (p) Where property is held to secure performance of other obligation (pre-judgment or after  
6 judgment). If the Property Subject to Garnishment secures any obligation other than the  
7 payment of money and if the obligation secured does not require the personal performance of the  
8 defendant and can be performed by the plaintiff or its designee, the court may, upon plaintiff's  
9 motion, authorize the plaintiff or its designee to perform the obligation or tender performance  
10 and that upon such performance, or any tender thereof which is refused, the garnishee shall  
11 deliver the Property Subject to Garnishment in accordance with the order of the Court.

12 (q) Disposition of property (pre-judgment or after judgment). The Property Subject to  
13 Garnishment under either Subdivision (o) or (p) of this Rule or the proceeds from the sale thereof  
14 shall be applied to the extent available, first to satisfy any costs of sale, then to repay any amount  
15 paid by the plaintiff to the garnishee to satisfy the obligation of the defendant to the garnishee,  
16 then to pay the costs to perform the obligation of the defendant to the garnishee for an obligation  
17 other than the payment of money, and then to satisfy the writ of garnishment.

18 (r) Order against garnishee for debt not due (pre-judgment or after judgment). When an  
19 order is made requiring a garnishee to pay an amount to the plaintiff or plaintiff's attorney or into  
20 court or otherwise provide property for disposition by the court and the same is not yet due to the  
21 defendant, payment or providing of property shall not be required until such payment or property  
22 is otherwise due the defendant from the garnishee.

23 (s) Failure to proceed against garnisheed property (pre-judgment or after judgment).  
24 Notwithstanding any other provision of this Rule, if a plaintiff fails, within sixty days from the  
25 filing of the garnishee's answers to interrogatories, to secure and personally serve on the  
26 garnishee an order requiring the garnishee to pay the property garnisheed into court or as  
27 otherwise provided herein, then the writ, which commanded the garnishee to hold the amount or  
28 property, shall be released and the garnishee discharged without further order of the court. If the  
29 Property Subject to Garnishment or any part thereof has been deposited with the court and the  
30 writ of garnishment was issued in aid of the execution of a judgment or order for the payment of  
31 money, and the plaintiff fails, within sixty days from the filing of the garnishee's answers to  
32 interrogatories, to request a release of the property garnisheed from the court in accordance with  
33 Subdivision (h)(i), then the writ shall be released; the garnisheed property shall be returned to the  
34 garnishee; and the garnishee discharged without further order of the court. Property Subject to  
35 Garnishment deposited with the court pursuant to a prejudgment writ of garnishment shall be  
36 released only upon order of the court. A release under this subdivision may be stayed upon order  
37 of the court for good cause shown. Such order shall not be binding upon the garnishee until  
38 served upon it.

39 (t) Costs (pre-judgment or after judgment).

40 (i) Costs shall be allowed as a matter of course to the plaintiff and against the defendant in  
41 the pursuit of any garnishee action instituted after judgment unless the court otherwise directs;  
42 provided, however, where an appeal or other proceeding for review is taken, costs of the  
43 garnishee action shall abide the final determination of the cause. Costs against the State of Utah,  
44 its officers and agencies shall be imposed only to the extent permitted by law.

1 (ii) The plaintiff must serve upon the defendant a copy of a memorandum of the items of  
2 necessary costs and disbursements in the garnishee action or actions, and file with the court a  
3 like memorandum duly verified stating that the items are correct, the disbursements have been  
4 necessarily incurred in the garnishee action, and the items of costs have not been claimed in any  
5 previous memorandum. The memorandum or memoranda may be filed at any time after  
6 judgment is rendered but in no event later than five days after the receipt of funds that would pay  
7 the judgment in full but for the payment of any costs associated with a garnishee action for  
8 which a memorandum or memoranda have not been filed with the court. A party dissatisfied with  
9 the costs claimed, may, within seven days after service of the memorandum of costs of the  
10 garnishee action, file a motion to have the costs taxed by the court.

11 (iii) All costs incurred in garnishee actions prior to the rendering of a judgment shall be taxed  
12 according to Rule 54(d) of these rules.

13 (u) (i) A garnishment issued to enforce a judgment obtained by the Office of Recovery  
14 Services, within the Department of Social Services, for repayment of overpayments, as defined  
15 in Section 62A-11-202, shall continue to operate and require the garnishee to withhold the  
16 nonexempt portion of disposable earnings, as defined in Subsection 62A-11-103(2), at each  
17 succeeding earnings disbursement interval until the garnishment is released in writing by the  
18 court or the Office of Recovery Services.

19 (ii) The garnishment described in Subdivision (u)(i) may not exceed 25% of earnings, as  
20 defined in Subsection 62A-11-103(3), or the amount permitted under Section 303(a) of the  
21 Consumer Credit Protection Act, 15 U.S.C. Section 1673(a), whichever is less.

22 (v) Writ of continuing garnishment on earnings.

23 (i) "Continuing garnishment" means any procedure for withholding the earnings of a  
24 defendant for successive pay periods for payment of a judgment debt, other than a judgment for  
25 support. "Earnings" and "Disposable Earnings" shall have the meaning set forth in Subdivision  
26 (d) of this rule. In addition to garnishment proceedings otherwise available under this rule, in any  
27 case in which a money judgment is obtained in a court of competent jurisdiction, the plaintiff or  
28 plaintiff's assignee shall be entitled, in accordance with this subdivision, to have the clerk of the  
29 court issue a writ of continuing garnishment against any garnishee who may owe earnings to the  
30 defendant. The person who serves a writ of continuing garnishment, together with the notices  
31 required by this rule, on the garnishee shall note the date and time of such service on the copy  
32 served. A writ of continuing garnishment shall be subject to the same exemptions from  
33 garnishment and portion of aggregate disposable earnings of defendant subject to garnishment as  
34 are described in Subdivision (d) of this rule.

35 (ii) To the extent that the earnings are not exempt from garnishment, the writ of continuing  
36 garnishment shall be a continuing lien on all disposable earnings due or to become due to the  
37 defendant from the date of service of the writ and continuing until the earlier of the following  
38 events:

39 (A) 120 days has expired from the date of service of the writ or, in the case of multiple  
40 garnishments, 120 days from the date a garnishment becomes effective as described hereafter in  
41 Subdivision (v)(iii);

42 (B) the end of the last pay period after the defendant's employment relationship is terminated;

43 (C) the underlying judgment is stayed, vacated or satisfied in full;

44 (D) the plaintiff releases the garnishment; or

1 (E) the writ of continuing garnishment is dismissed, vacated, or stayed by a court of  
2 competent jurisdiction.

3 The plaintiff shall notify the garnishee in writing by first class mail within 5 days after a  
4 judgment is stayed, vacated, or satisfied or a writ of continuing garnishment is dismissed,  
5 vacated, or stayed by the court.

6 (iii) Only one writ of garnishment (continuing or otherwise) shall be in effect and satisfied at  
7 one time. When more than one writ of garnishment has been issued against earnings due the  
8 same defendant and served on the same garnishee, the writs shall be satisfied in the order of  
9 service on the garnishee. Upon expiration of a writ of continuing garnishment, as provided in  
10 Subdivision (v)(ii) above, any other writ of continuing garnishment that has been issued and  
11 served upon a garnishee against earnings due the defendant shall then become effective and shall  
12 continue for the period described in Subdivision (v)(ii) above. No plaintiff may have issued more  
13 than one writ of continuing garnishment against the same earnings of any individual defendant  
14 during the term of the lien created by any writ of continuing garnishment previously issued and  
15 served in favor of that plaintiff. Any writ of continuing garnishment served upon a garnishee  
16 while any previous writ is still in effect shall be answered by the garnishee with a statement that  
17 the garnishee has been served previously with one or more writs of garnishment against earnings  
18 and specifying the date on which all such liens previously served are expected to terminate.

19 (iv) Garnishee shall answer any interrogatories and serve upon the defendant information as  
20 required by Subdivisions (d) and (g) of this rule ~~and shall deliver the Property Subject to~~  
21 ~~Garnishment from the first applicable pay period as if the writ were not a continuing~~  
22 ~~garnishment.~~ Thereafter, the defendant shall have the right to request a hearing as provided in  
23 Subdivision (h) of this rule. If garnishee does not receive a copy of a request for hearing within  
24 20 days after service of copies of materials required to be served by Subdivision (d)(iii),  
25 garnishee shall pay Property Subject to Garnishment from the first applicable pay period to  
26 plaintiff or plaintiff's attorney. Any hearing requested by the defendant outside of that provided  
27 for in Subdivision (h) shall be requested by motion to the court and held within the judge's sole  
28 discretion. Unless the writ shall terminate pursuant to Subdivision (v)(ii) above or unless a  
29 request for hearing has been served on the garnishee but there has been no subsequent court  
30 order, within 10 days after the end of each subsequent pay period, the garnishee shall deliver the  
31 Property Subject to Garnishment either to the plaintiff or to the plaintiff's attorney, together with  
32 an affidavit which shall state (1) whether the garnishee is indebted to the defendant for earnings,  
33 specifying the beginning and ending dates of the applicable pay period, and the total earnings for  
34 the pay period; (2) whether garnishee is retaining or deducting any amount in satisfaction of a  
35 claim the garnishee has against the plaintiff or the defendant, a designation as to whom such  
36 claim relates, and the amount retained or deducted; (3) the computation of the amount of  
37 defendant's accrued disposable earnings attached by the writ for the applicable pay period; and  
38 (4) that garnishee has served defendant with a copy of the writ of garnishment and notice of  
39 garnishment and exemptions as required by Subdivision (d) of this rule. Proceedings on failure  
40 of garnishee to comply with this Subdivision (v) shall follow Subdivision (j) of this rule. Reply  
41 to any answer or affidavit of garnishee completed pursuant to this Subdivision (v) shall follow  
42 Subdivision (i) of this rule.

43 (v) Notwithstanding any other provision of this Subdivision (v), a writ of continuing  
44 garnishment issued to enforce a judgment obtained by the Office of Recovery Services, within  
45 the Department of Social Services, shall have priority over any other writ of continuing

1 garnishment in accordance with Subdivision (u) of this rule. If a writ of continuing garnishment  
2 issued by the Office of Recovery Services is served during the term of a lien created by any other  
3 writ of continuing garnishment, the term of that lien shall be tolled and all priorities preserved  
4 until the expiration of the Office of Recovery Services writ.

5 (vi) The plaintiff shall be responsible for insuring that the amounts garnished do not exceed  
6 the amount due on the judgment.

7 (vii) Except as specifically noted in this Subdivision (v), all other provisions of this rule  
8 apply to this subdivision.

9 **ADVISORY COMMITTEE NOTE**

10 The 1989 amendments to this rule constituted a complete reorganization and substantial  
11 revision of the rules applicable to prejudgment and post-judgment garnishment. While not an  
12 exhaustive list of changes, the Advisory Committee notes the following significant changes:

13 The rule is organized in such a way that Subdivision (b) specifies the unique requirements of  
14 a prejudgment writ and Subdivision (c) addresses matters unique to post-judgment writs. All  
15 other subdivisions are applicable to both prejudgment and post-judgment writs. It should be  
16 noted that prejudgment orders requiring the payment of money can be the basis for the issuance  
17 of a writ prior to judgment.

18 Subdivision (b) specifies the requirements for issuance of a prejudgment writ. The  
19 requirement of an affidavit is retained from the previous rule. The affidavit must now contain a  
20 statement of the amount prayed for in the complaint. The subdivision also provides that multiple  
21 writs may issue at the same time, but only one garnishee can be named in a single writ. A writ  
22 will not be issued unless the fee required to be paid to the garnishee is attached.

23 Subdivision (c) eliminates the requirement of an affidavit by the plaintiff in post-judgment  
24 garnishment proceedings, and requires only an application. The application must state the  
25 amount remaining due on the judgment. Multiple writs may issue at the same time, but only one  
26 garnishee can be named in a single writ. A writ will not issue unless the fee required to be paid to  
27 the garnishee is attached.

28 Subdivision (d)(i) limits the writ, in the prejudgment context, to the amount claimed to be  
29 due the plaintiff and, in the post-judgment context, to the amount remaining due on the  
30 judgment. This subdivision also requires the clerk to attach to the writ a notice of garnishment  
31 and exemptions, and two copies of an application by which the defendant may request a hearing.  
32 It is expected in practice that the plaintiff will provide to the clerk the materials to be attached to  
33 the writ. Subdivision (d)(ii) requires the garnishee to serve and file answers to interrogatories  
34 within five business days after the service of the writ. The interrogatories may seek any relevant  
35 information. The fee to be paid by plaintiff to the garnishee is \$10.00. Subdivision (d)(iii)  
36 requires a garnishee holding property subject to garnishment to serve upon the defendant by mail  
37 or hand delivery within five business days of service of the writ the following: a copy of the writ,  
38 answers to interrogatories, notice of garnishment and exemptions and two copies of an  
39 application by which the defendant may request a hearing. Service of these materials in the same  
40 manner and at the same time must be made upon any other person shown upon garnishee's  
41 records to be a co-owner or having an interest in the property garnished. Subdivision (d)(vii)  
42 defines earnings and disposable earnings, and includes a more expansive definition when the writ  
43 relates to a judgment for child support arrearages. Subdivision (d)(viii)(B) corrects one of the  
44 two-pronged formulas for the maximum amount of disposable earnings subject to garnishment to

1 correspond with the existing provisions of Section 70C-7-103(2)(b), Utah Code Ann., and the  
2 adjustments to the formula when the writ relates to a judgment for child support arrearages.

3 Subdivision (e) delineates service requirements. Excepting the writ and specified court  
4 orders, service may be by first class mail or hand delivery.

5 Subdivision (h) specifies the procedure for the defendant or any party claiming an interest in  
6 the property garnished to request a hearing on any exemption. The hearing must be requested  
7 within ten days of the service of the materials required to be served under Subdivision (d)(iii).  
8 The rule specifically provides that the additional three days allowed under Rule 6(e) when  
9 service is accomplished by mail is not to be included in calculating the time within which a  
10 hearing must be requested. A request for hearing is also timely made if filed prior to any request  
11 for an order to the garnishee to pay. The rule further provides the specific items to be contained  
12 in the copy of the request for a hearing which the garnishee is to provide to the defendant and  
13 interested persons. Subdivisions (h)(i) and (ii) specify the procedure and consequence when no  
14 hearing is requested. Subdivision (h)(iii) provides that a hearing shall be conducted within ten  
15 days of any request. It is anticipated that such hearings may be telephonic when appropriate and  
16 necessary. Subdivision (h)(iv) addresses the disposition of property other than money.

17 The 1995 amendments to Subdivision (j) establish the procedure for the plaintiff to obtain  
18 release of property delivered to the court by a garnishee who fails to file answers to the  
19 interrogatories or an Affidavit of Garnishee as to Continuing Garnishment. The rule allows  
20 plaintiff to file an ex parte motion for release of garnishment funds 60 days after a writ is issued  
21 or the property is delivered to the Court. The defendant has 10 days after a copy of the motion is  
22 mailed by the plaintiff to defendant to object to the release of funds before the court will enter  
23 the order to release the garnishment funds.

24 Subdivision (m) sets forth the procedure when a garnishee has claims against the plaintiff or  
25 defendant. Any property retained or deducted by the garnishee pursuant to this section must be  
26 specified in the garnishee's answers to interrogatories.

27 Subdivision (s) provides that a writ is deemed released if the plaintiff fails to secure and  
28 personally serve on the garnishee an order to pay, deliver or otherwise dispose of the property  
29 within sixty (60) days from the filing of the answers to interrogatories. The rule does allow an  
30 order to stay the release which is binding upon the garnishee when served.

31 Subdivision (v) establishes the procedure to obtain a writ of continuing garnishment against  
32 earnings from personal services of the defendant which shall create a lien on all disposable  
33 earnings for a period of 120 days from service of the writ or the effective date of the writ. The  
34 rule specifies that in the case of multiple garnishments, priority shall be based on the order of  
35 service of the writs on the garnishee. The rule further specifies that the garnishee shall answer  
36 interrogatories and send notice of the garnishment and exemptions to the defendant ~~for the first~~  
37 ~~pay period as if the writ was not continuing.~~ Notice to the defendant shall include information  
38 that the defendant may claim an exemption to garnishment and request a hearing from the court  
39 at any time throughout the term of the continuing garnishment. ~~Thereafter, for each subsequent~~  
40 ~~pay period, the~~ The garnishee shall file an affidavit with the court with a copy sent to the plaintiff  
41 reflecting the amount of the property subject to garnishment, and shall immediately deliver such  
42 property to the plaintiff or the plaintiff's attorney.

43 Subdivision (t) provides for costs in any garnishee action.

1 The forms have been revised consistent with the amendments to the rule. Two significant  
2 form revisions are that the writ is limited to the amount remaining due on the judgment or order  
3 and the garnishee interrogatories may be attested to on information and belief.

4 Rule 81. Applicability of rules in general.

5 (a) Special statutory proceedings. These rules shall apply to all special statutory  
6 proceedings, except insofar as such rules are by their nature clearly inapplicable. Where a statute  
7 provides for procedure by reference to any part of the former Code of Civil Procedure, such  
8 procedure shall be in accordance with these rules.

9 (b) Probate and guardianship. These rules shall not apply to proceedings in uncontested  
10 probate and guardianship matters, but shall apply to all proceedings subsequent to the joinder of  
11 issue therein, including the enforcement of any judgment or order entered.

12 (c) ~~Procedure in city courts and justice courts. These rules shall apply to civil actions~~  
13 ~~commenced in the city or justice courts, except insofar as such rules are by their nature clearly~~  
14 ~~inapplicable to such courts or proceedings therein. Application to small claims. These rules shall~~  
15 ~~not apply to small claims proceedings except as expressly incorporated in the Small Claims~~  
16 ~~Rules.~~

17 (d) On appeal from or review of a ruling or order of an administrative board or agency.  
18 These rules shall apply to the practice and procedure in appealing from or obtaining a review of  
19 any order, ruling or other action of an administrative board or agency, except insofar as the  
20 specific statutory procedure in connection with any such appeal or review is in conflict or  
21 inconsistent with these rules.

22 (d) Application in criminal proceedings. These rules of procedure shall also govern in any  
23 aspect of criminal proceedings where there is no other applicable statute or rule, provided, that  
24 any rule so applied does not conflict with any statutory or constitutional requirement.

25 Utah Rules of Small Claims Procedure

26 Rule 1. Scope, purpose, and forms.

27 (a) These rules constitute the “simplified rules of procedure and evidence” in small claims  
28 cases required by Utah Code Section 78-6-1 and shall be referred to as the Rules of Small Claims  
29 Procedure. They are to be interpreted to carry out the statutory purpose of small claims cases,  
30 dispensing speedy justice between the parties.

31 (b) These rules apply to the initial trial and any appeal under Rule 12 of all actions pursued as  
32 a small claims action under Utah Code Section 78-6-1 et. seq.

33 (c) If the Supreme Court has approved a form for use in small claims actions, parties must  
34 file documents substantially similar in form to the approved form.

35 Rule 2. Beginning the case.

36 (a) A case is begun by filing a Small Claims Affidavit (Form A) with the clerk of the court.  
37 The affidavit qualifies as a complaint under Section 78-27-25.

38 (b) Unless waived upon filing an Affidavit of Impecuniosity, the appropriate filing fee must  
39 accompany the Affidavit.

40 (c) A separate form of Affidavit (Form C) is available for an “interpleader action” - - action  
41 in which plaintiff is holding money that is claimed by two or more other parties. In an  
42 interpleader action, plaintiff must pay the money into the court at the time of filing the Affidavit  
43 or acknowledge that it will pay the money to whomever the court directs.

1 Rule 3. Service of the Affidavit.

2 (a) After filing the Affidavit and receiving a trial date, plaintiff must serve the Affidavit on  
3 defendant. To serve the affidavit, plaintiff must either

4 (1) deliver the Affidavit and a copy to a sheriff's department or constable for service upon  
5 the defendant and pay for that service; or

6 (2) deliver a copy of the Affidavit to defendant by a method of mail or commercial courier  
7 service that requires defendant to sign a document indicating receipt and provides for return of  
8 that document to the court.

9 (b) The Affidavit must be served at least thirty calendar days before the trial date. Service by  
10 mail or commercial courier service is complete on the date the receipt is signed by defendant.

11 (c) Proof of service must be filed with the court no later than ten calendar days after service.  
12 If service is by mail or commercial courier service, plaintiff must file a Proof of Service (Form  
13 D). If service is by a sheriff or constable, proof of service must be filed by the sheriff or  
14 constable.

15 Rule 4. Counter Affidavit.

16 (a) If defendant claims plaintiff owes defendant money, defendant may file a Counter  
17 Affidavit.

18 (b) Unless waived upon filing an Affidavit of Impecuniosity, the appropriate filing fee must  
19 accompany the Counter Affidavit (Form B).

20 (c) Any Counter Affidavit must be filed at least fifteen calendar days before the trial. The  
21 court clerk will mail a copy of the Counter Affidavit to plaintiff at the address provided by  
22 plaintiff on the Affidavit.

23 (d) In a case filed in district court, if the Counter Affidavit alleges that plaintiff owes  
24 defendant more than the monetary limit for small claims procedures, the entire case will proceed  
25 as a regular civil case.

26 (e) In a case filed in justice court, if the Counter Affidavit alleges that plaintiff owes  
27 defendant more than the monetary limit for small claims procedures, the entire case must be  
28 transferred to district court and will proceed as a regular civil case.

29 (f) Defendant must pay both parties' additional filing fees imposed as a result of the case  
30 proceeding as a regular civil case. If necessary, defendant must arrange for transfer of the case.

31 Rule 5. No answer required.

32 No answer is required to an Affidavit or Counter Affidavit. All allegations are deemed  
33 denied.

34 Rule 6. Pretrial.

35 (a) No formal discovery may be conducted but the parties are urged to exchange information  
36 prior to the trial.

37 (b) Written motions and responses may be filed prior to trial. Motions may be made orally or  
38 in writing at the beginning of the trial. No motions will be heard prior to trial.

39 (c) One postponement of the trial date ("continuance") per side may be granted by the court  
40 clerk. To request a continuance, a party must file a Request for Continuance (Form E) with the  
41 court. The clerk will give notice to the other party. A Request for Continuance must be received  
42 by the court at least five calendar days before trial. A continuance for more than forty-five  
43 calendar days may be granted only by the judge.

44 Rule 7. Trial.



1       (a) All parties must bring to the trial all documents related to the controversy regardless of  
2 whose position they support. Possible documents include medical bills, damage estimates,  
3 receipts, rental agreements, leases, correspondence, and any contracts on which the case is based.

4       (b) Parties may have witnesses testify at trial and bring documents. To require attendance by  
5 a witness who will not attend voluntarily, a party must “subpoena” the witness. The clerk of the  
6 court or a party’s attorney may issue a subpoena pursuant to Utah Rule of Civil Procedure 45.  
7 The party requesting the subpoena is responsible for service of the subpoena and payment of any  
8 fees. A subpoena must be served at least five calendar days prior to trial.

9       (c) The judge will conduct the trial and question the witnesses. The trial will be conducted in  
10 such a way as to give all parties a reasonable opportunity to present their positions. The judge  
11 may allow parties or their counsel to question witnesses.

12       (d) The judge may receive the type of evidence commonly relied upon by reasonably prudent  
13 persons in the conduct of their business affairs. The rules of evidence shall not be applied  
14 strictly. The judge may allow hearsay that is probative, trustworthy and credible. Irrelevant or  
15 unduly repetitious evidence shall be excluded.

16       (e) After trial, the judge shall decide the case and direct the entry of judgment. No written  
17 findings are required. The Small Claims Judgment (Form F or G) with the Notice of Entry of  
18 Judgment completed shall be provided to each party by the court if all parties are present at trial  
19 or by the prevailing party if fewer than all parties are present.

20       (f) Filing fees and costs will be awarded to the prevailing party and to plaintiff in an  
21 interpleader action unless the judge otherwise orders.

#### 22       Rule 8. Dismissal.

23       (a) Except in interpleader cases, if plaintiff fails to appear at the time set for trial, plaintiff’s  
24 claim will be dismissed with prejudice unless the judge otherwise orders.

25       (b) If defendant has filed a Counter Affidavit and fails to appear at the time set for trial,  
26 defendant’s claim will be dismissed with prejudice unless the judge otherwise orders.

27       (c) The prevailing party shall send all other parties a copy of the Small Claims Judgment  
28 (Form F or G) with the Notice of Entry of Judgment completed and file the completed copy with  
29 the court.

#### 30       Rule 9. Default Judgment.

31       (a) If defendant fails to appear at the time set for trial, the court may grant plaintiff judgment  
32 in an amount not to exceed the amount requested in plaintiff’s Affidavit.

33       (b) If defendant has filed a Counter Affidavit and plaintiff fails to appear at the time set for  
34 trial, the court may grant defendant judgment in an amount not to exceed the amount requested  
35 in defendant’s Counter Affidavit.

36       (c) Any party granted a default judgment shall promptly send a copy of a completed Notice  
37 of Default Judgment (Form H) to the other party and file the original with the court.

38       (d) In an interpleader action, if a defendant fails to appear, a default judgment may be entered  
39 against the non-appearing defendant.

#### 40       Rule 10. Set aside of default judgments and dismissals.

41       (a) Within thirty calendar days from the mailing of the Notice of Default Judgment or the  
42 date of dismissal, a party may request that the default judgment or dismissal be set aside by filing  
43 a Request to Set Aside Judgment (Form I). If the court receives a timely request to set aside the  
44 default judgment or dismissal and good cause is shown, the court may grant the request and

1 reschedule a trial. The court may require the requesting party's payment of the costs incurred by  
2 the other party in obtaining the default judgment or dismissal.

3 (b) The thirty day period for requesting the set aside of a default judgment or dismissal may  
4 be extended by the court for good cause if the request is made in a reasonable time.

5 Rule 11. Collection of Judgments.

6 (a) Judgments may be collected under the Utah Rules of Civil Procedure.

7 (b) Upon full payment of the judgment including post-judgment costs and interest, the  
8 prevailing party shall promptly file a Satisfaction of Judgment (Form J) with the court.

9 (c) The court may enter a Satisfaction of Judgment at the request of a party after ten calendar  
10 days notice to all parties.

11 Rule 12. Appeals.

12 (a) Either party may appeal a small claims judgment within ten business days (not counting  
13 weekends and holidays) of receipt of notice of entry of judgment.

14 (b) To appeal, the appealing party must file a Notice of Appeal (Form K) in the court issuing  
15 the judgment and mail a copy to each party. The appropriate fee must accompany the Notice of  
16 Appeal.

17 (c) On appeal, a new trial will be held ("trial de novo").

18 Utah Rules of Criminal Procedure

19 Rule 11. Pleas.

20 (a) Upon arraignment, except for an infraction, a defendant shall be represented by counsel,  
21 unless the defendant waives counsel in open court. The defendant shall not be required to plead  
22 until the defendant has had a reasonable time to confer with counsel.

23 (b) A defendant may plead not guilty, guilty, no contest, not guilty by reason of insanity, or  
24 guilty and mentally ill. A defendant may plead in the alternative not guilty or not guilty by  
25 reason of insanity. If a defendant refuses to plead or if a defendant corporation fails to appear,  
26 the court shall enter a plea of not guilty.

27 (c) A defendant may plead no contest only with the consent of the court.

28 (d) When a defendant enters a plea of not guilty, the case shall forthwith be set for trial. A  
29 defendant unable to make bail shall be given a preference for an early trial. In cases other than  
30 felonies the court shall advise the defendant, or counsel, of the requirements for making a written  
31 demand for a jury trial.

32 (e) The court may refuse to accept a plea of guilty, no contest or guilty and mentally ill, and  
33 may not accept the plea until the court has found:

34 (1) if the defendant is not represented by counsel, he or she has knowingly waived the right  
35 to counsel and does not desire counsel;

36 (2) the plea is voluntarily made;

37 (3) the defendant knows of the right to the presumption of innocence, the right against  
38 compulsory self-incrimination, the right to a speedy public trial before an impartial jury, the right  
39 to confront and cross-examine in open court the prosecution witnesses, the right to compel the  
40 attendance of defense witnesses, and that by entering the plea, these rights are waived;

1 (4) (A) the defendant understands the nature and elements of the offense to which the plea is  
2 entered, that upon trial the prosecution would have the burden of proving each of those elements  
3 beyond a reasonable doubt, and that the plea is an admission of all those elements;

4 (B) there is a factual basis for the plea. A factual basis is sufficient if it establishes that the  
5 charged crime was actually committed by the defendant or, if the defendant refuses or is  
6 otherwise unable to admit culpability, that the prosecution has sufficient evidence to establish a  
7 substantial risk of conviction;

8 (5) the defendant knows the minimum and maximum sentence, and if applicable, the  
9 minimum mandatory nature of the minimum sentence, that may be imposed for each offense to  
10 which a plea is entered, including the possibility of the imposition of consecutive sentences;

11 (6) if the tendered plea is a result of a prior plea discussion and plea agreement, and if so,  
12 what agreement has been reached;

13 (7) the defendant has been advised of the time limits for filing any motion to withdraw the  
14 plea; and

15 (8) the defendant has been advised that the right of appeal is limited.

16 These findings may be based on questioning of the defendant on the record or, if used, ~~an~~  
17 ~~affidavit-a sworn statement~~ reciting these factors after the court has established that the defendant  
18 has read, understood, and acknowledged the contents of the ~~affidavit sworn statement~~. If the  
19 defendant cannot understand the English language, it will be sufficient that the ~~affidavit-sworn~~  
20 ~~statement~~ has been read or translated to the defendant.

21 Unless specifically required by statute or rule, a court is not required to inquire into or advise  
22 concerning any collateral consequences of a plea.

23 (f) Failure to advise the defendant of the time limits for filing any motion to withdraw a plea  
24 of guilty, no contest or guilty and mentally ill is not a ground for setting the plea aside, but may  
25 be the ground for extending the time to make a motion under Section 77-13-6.

26 (g) (1) If it appears that the prosecuting attorney or any other party has agreed to request or  
27 recommend the acceptance of a plea to a lesser included offense, or the dismissal of other  
28 charges, the agreement shall be approved by the court.

29 (2) If sentencing recommendations are allowed by the court, the court shall advise the  
30 defendant personally that any recommendation as to sentence is not binding on the court.

31 (h) (1) The judge shall not participate in plea discussions prior to any plea agreement being  
32 made by the prosecuting attorney.

33 (2) When a tentative plea agreement has been reached, the judge, upon request of the parties,  
34 may permit the disclosure of the tentative agreement and the reasons for it, in advance of the  
35 time for tender of the plea. The judge may then indicate to the prosecuting attorney and defense  
36 counsel whether the proposed disposition will be approved.

37 (3) If the judge then decides that final disposition should not be in conformity with the plea  
38 agreement, the judge shall advise the defendant and then call upon the defendant to either affirm  
39 or withdraw the plea.

40 (i) With approval of the court and the consent of the prosecution, a defendant may enter a  
41 conditional plea of guilty, guilty and mentally ill, or no contest, reserving in the record the right,

1 on appeal from the judgment, to a review of the adverse determination of any specified pre-trial  
2 motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

3 (j) When a defendant tenders a plea of guilty and mentally ill, in addition to the other  
4 requirements of this rule, the court shall hold a hearing within a reasonable time to determine if  
5 the defendant is mentally ill in accordance with Utah Code Ann. " 77-16a-103.

#### 6 ADVISORY COMMITTEE NOTE

7 These amendments are intended to reflect current law without any substantive changes. The  
8 addition of a requirement for a finding of a factual basis in section (e)(4)(B) tracks federal rule  
9 11(f), and is in accordance with prior case law. E.g. State v. Breckenridge, 688 P.2d 440 (Utah  
10 1983). The rule now explicitly recognizes pleas under North Carolina v. Alford, 400 U.S. 25, 91  
11 S.Ct. 160, 27 L.Ed.2d 162 (1970), and sets forth the factual basis required for those pleas. E.g.  
12 Willett v. Barnes, 842 P.2d 860 (Utah 1992).

13 The amendments explicitly recognize that plea affidavits, where used, may properly be  
14 incorporated into the record when the trial court determines that the defendant has read (or been  
15 read) the affidavit, understands its contents, and acknowledges the contents. State v. Maguire,  
16 830 P.2d 216 (Utah 1991). Proper incorporation of plea affidavits can save the court time,  
17 eliminate some of the monotony of rote recitations of rights waived by pleading guilty, and allow  
18 a more focused and probing inquiry into the facts of the offense, the relationship of the law to  
19 those facts, and whether the plea is knowingly and voluntarily entered. These benefits are  
20 contingent on a careful and considered review of the affidavit by the defendant and proper care  
21 by the trial court to verify that such a review has actually occurred.

22 The final paragraph of section (e) clarifies that the trial court may, but need not, advise  
23 defendants concerning collateral consequences of a guilty plea. The failure to so advise does not  
24 affect the validity of a plea. State v. McFadden, 884 P.2d 1303 (Utah App. 1994), cert. denied,  
25 892 P.2d 13 (Utah 1995).

#### 26 Rule 16. Discovery.

27 (a) Except as otherwise provided, the prosecutor shall disclose to the defense upon request  
28 the following material or information of which he has knowledge:

29 (1) relevant written or recorded statements of the defendant or codefendants;

30 (2) the criminal record of the defendant;

31 (3) physical evidence seized from the defendant or codefendant;

32 (4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate  
33 the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and

34 (5) any other item of evidence which the court determines on good cause shown should be  
35 made available to the defendant in order for the defendant to adequately prepare his defense.

36 (b) The prosecutor shall make all disclosures as soon as practicable following the filing of  
37 charges and before the defendant is required to plead. The prosecutor has a continuing duty to  
38 make disclosure.

39 (c) Except as otherwise provided or as privileged, the defense shall disclose to the prosecutor  
40 such information as required by statute relating to alibi or insanity and any other item of  
41 evidence which the court determines on good cause shown should be made available to the  
42 prosecutor in order for the prosecutor to adequately prepare his case.

43 (d) Unless otherwise provided, the defense attorney shall make all disclosures at least ten  
44 days before trial or as soon as practicable. He has a continuing duty to make disclosure.

1 (e) When convenience reasonably requires, the prosecutor or defense may make disclosure  
2 by notifying the opposing party that material and information may be inspected, tested or copied  
3 at specified reasonable times and places. The prosecutor or defense may impose reasonable  
4 limitations on the further dissemination of sensitive information otherwise subject to discovery to  
5 prevent improper use of the information or to protect victims and witnesses from harassment,  
6 abuse, or undue invasion of privacy, including limitations on the further dissemination of  
7 videotaped interviews, photographs, or psychological or medical reports.

8 (f) Upon a sufficient showing the court may at any time order that discovery or inspection be  
9 denied, restricted, or deferred, that limitations on the further dissemination of discovery be  
10 modified or make such other order as is appropriate. Upon motion by a party, the court may  
11 permit the party to make such showing, in whole or in part, in the form of a written statement to  
12 be inspected by the judge alone. If the court enters an order granting relief following such an ex  
13 parte showing, the entire text of the party's statement shall be sealed and preserved in the records  
14 of the court to be made available to the appellate court in the event of an appeal.

15 (g) If at any time during the course of the proceedings it is brought to the attention of the  
16 court that a party has failed to comply with this rule, the court may order such party to permit the  
17 discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not  
18 disclosed, or it may enter such other order as it deems just under the circumstances.

19 (h) Subject to constitutional limitations, the accused may be required to:

- 20 (1) appear in a lineup;
- 21 (2) speak for identification;
- 22 (3) submit to fingerprinting or the making of other bodily impressions;
- 23 (4) pose for photographs not involving reenactment of the crime;
- 24 (5) try on articles of clothing or other items of disguise;
- 25 (6) permit the taking of samples of blood, hair, fingernail scrapings, and other bodily  
26 materials which can be obtained without unreasonable intrusion;
- 27 (7) provide specimens of handwriting;
- 28 (8) submit to reasonable physical or medical inspection of his body; and
- 29 (9) cut hair or allow hair to grow to approximate appearance at the time of the alleged  
30 offense. Whenever the personal appearance of the accused is required for the foregoing  
31 purposes, reasonable notice of the time and place of such appearance shall be given to the  
32 accused and his counsel. Failure of the accused to appear or to comply with the requirements of  
33 this rule, unless relieved by order of the court, without reasonable excuse shall be grounds for  
34 revocation of pre-trial release, may be offered as evidence in the prosecutor's case in chief for  
35 consideration along with other evidence concerning the guilt of the accused and shall be subject  
36 to such further sanctions as the court should deem appropriate.

#### 37 Rule 17. The trial.

38 (a) In all cases the defendant shall have the right to appear and defend in person and by  
39 counsel. The defendant shall be personally present at the trial with the following exceptions:

40 (1) In prosecutions of misdemeanors and infractions, defendant may consent in writing to  
41 trial in his absence;

42 (2) In prosecutions for offenses not punishable by death, the defendant's voluntary absence  
43 from the trial after notice to defendant of the time for trial shall not prevent the case from being  
44 tried and a verdict or judgment entered therein shall have the same effect as if defendant had  
45 been present; and

1 (3) The court may exclude or excuse a defendant from trial for good cause shown which may  
2 include tumultuous, riotous, or obstreperous conduct.

3 Upon application of the prosecution, the court may require the personal attendance of the  
4 defendant at the trial.

5 (b) Cases shall be set on the trial calendar to be tried in the following order:

6 (1) misdemeanor cases when defendant is in custody;

7 (2) felony cases when defendant is in custody;

8 (3) felony cases when defendant is on bail or recognizance; and

9 (4) misdemeanor cases when defendant is on bail or recognizance.

10 (c) All felony cases shall be tried by jury unless the defendant waives a jury in open court  
11 with the approval of the court and the consent of the prosecution.

12 (d) All other cases shall be tried without a jury unless the defendant makes written demand at  
13 least ten days prior to trial, or the court orders otherwise. No jury shall be allowed in the trial of  
14 an infraction.

15 (e) In all cases, the number of members of a trial jury shall be as specified in Section 78-46-  
16 5, U.C.A. 1953.

17 (f) In all cases the prosecution and defense may, with the consent of the accused and the  
18 approval of the court, by stipulation in writing or made orally in open court, proceed to trial or  
19 complete a trial then in progress with any number of jurors less than otherwise required.

20 (g) After the jury has been ~~impanelled~~impaneled and sworn, the trial shall proceed in the  
21 following order:

22 (1) The charge shall be read and the plea of the defendant stated;

23 (2) The prosecuting attorney may make an opening statement and the defense may make an  
24 opening statement or reserve it until the prosecution has rested;

25 (3) The prosecution shall offer evidence in support of the charge;

26 (4) When the prosecution has rested, the defense may present its case;

27 (5) Thereafter, the parties may offer only rebutting evidence unless the court, for good cause,  
28 otherwise permits;

29 (6) When the evidence is concluded and at any other appropriate time, the court shall instruct  
30 the jury; and

31 (7) Unless the cause is submitted to the jury on either side or on both sides without argument,  
32 the prosecution shall open the argument, the defense shall follow and the prosecution may close  
33 by responding to the defense argument. The court may set reasonable limits upon the argument  
34 of counsel for each party and the time to be allowed for argument.

35 (h) If a juror becomes ill, disabled or disqualified during trial and an alternate juror has been  
36 selected, the case shall proceed using the alternate juror. If no alternate has been selected, the  
37 parties may stipulate to proceed with the number of jurors remaining. Otherwise, the jury shall  
38 be discharged and a new trial ordered.

39 (i) When in the opinion of the court it is proper for the jury to view the place in which the  
40 offense is alleged to have been committed, or in which any other material fact occurred, it may  
41 order them to be conducted in a body under the charge of an officer to the place, which shall be  
42 shown to them by some person appointed by the court for that purpose. The officer shall be  
43 sworn that while the jury are thus conducted, he will suffer no person other than the person so  
44 appointed to speak to them nor to do so himself on any subject connected with the trial and to  
45 return them into court without unnecessary delay or at a specified time.

1 (j) At each recess of the court, whether the jurors are permitted to separate or are sequestered,  
2 they shall be admonished by the court that it is their duty not to converse among themselves or to  
3 converse with, or suffer themselves to be addressed by, any other person on any subject of the  
4 trial, and that it is their duty not to form or express an opinion thereon until the case is finally  
5 submitted to them.

6 (k) Upon retiring for deliberation, the jury may take with them the instructions of the court  
7 and all exhibits ~~and papers~~ which have been received as evidence, except ~~depositions; and each~~  
8 ~~juror may also take with him any notes of the testimony or other proceedings taken by himself,~~  
9 ~~but none taken by any other person~~ exhibits that should not, in the opinion of the court, be in the  
10 possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall  
11 permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and  
12 to have those notes with them during deliberations. As necessary, the court shall provide jurors  
13 with writing materials and instruct the jury on taking and using notes.

14 (l) When the case is finally submitted to the jury, they shall be kept together in some  
15 convenient place under charge of an officer until they agree upon a verdict or are discharged,  
16 unless otherwise ordered by the court. Except by order of the court, the officer having them  
17 under his charge shall not allow any communication to be made to them, or make any himself,  
18 except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is  
19 rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

20 (m) After the jury has retired for deliberation, if they desire to be informed on any point of  
21 law arising in the cause, they shall inform the officer in charge of them, who shall communicate  
22 such request to the court. The court may then direct that the jury be brought before the court  
23 where, in the presence of the defendant and both counsel, the court shall respond to the inquiry  
24 or advise the jury that no further instructions shall be given. Such response shall be recorded.  
25 The court may in its discretion respond to the inquiry in writing without having the jury brought  
26 before the court, in which case the inquiry and the response thereto shall be entered in the record.

27 (n) If the verdict rendered by a jury is incorrect on its face, it may be corrected by the jury  
28 under the advice of the court, or the jury may be sent out again.

29 (o) At the conclusion of the evidence by the prosecution, or at the conclusion of all the  
30 evidence, the court may issue an order dismissing any information or indictment, or any count  
31 thereof, upon the ground that the evidence is not legally sufficient to establish the offense  
32 charged therein or any lesser included offense.

33 Advisory Committee Note. Paragraph (k). The committee recommends amending paragraph  
34 (k) to establish the right of jurors to take notes and to have those notes with them during  
35 deliberations. The committee recommends removing depositions from the paragraph not in order  
36 to permit the jurors to have depositions but to recognize that depositions are not evidence.  
37 Depositions read into evidence will be treated as any other oral testimony. These amendments  
38 and similar amendments to the Rules of Civil Procedure will make the two provisions identical.

39 Rule 18. Selection of the jury.

40 (a) The judge shall determine the method of selecting the jury and notify the parties at a  
41 pretrial conference or otherwise prior to trial. The following procedures for selection are not  
42 exclusive.

43 (1) Strike and replace method. The clerk shall draw by lot and call court shall summon the  
44 number of the jurors that are to try the cause plus such an additional number as will allow for any  
45 alternates, for all peremptory challenges permitted, and for all challenges for cause granted. At

1 the direction of the judge, the clerk shall call jurors in random order. The judge may hear and  
2 determine challenges for cause during the course of questioning or at the end thereof. The judge  
3 may and, at the request of any party, shall hear and determine challenges for cause outside the  
4 hearing of the jurors. After each challenge for cause sustained, another juror shall be called to fill  
5 the vacancy before further challenges are made, and any such new juror may be challenged for  
6 cause. When the challenges for cause are completed, the clerk shall ~~make~~ provide a list of the  
7 jurors remaining, and each side, beginning with the prosecution, shall indicate thereon its  
8 peremptory challenge to one juror at a time in regular turn, as the court may direct, until all  
9 peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or  
10 so many of them as shall be necessary to constitute the jury, ~~in the order in which they appear on~~  
11 ~~the list,~~ including any alternate jurors, and the persons whose names are so called shall constitute  
12 the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless  
13 otherwise ordered by the court prior to voir dire.

14 (2) Struck method. The court shall summon the number of jurors that are to try the cause plus  
15 such an additional number as will allow for any alternates, for all peremptory challenges  
16 permitted and for all challenges for cause granted. At the direction of the judge, the clerk shall  
17 call jurors in random order. The judge may hear and determine challenges for cause during the  
18 course of questioning or at the end thereof. The judge may and, at the request of any party, shall  
19 hear and determine challenges for cause outside the hearing of the jurors. When the challenges  
20 for cause are completed, the clerk shall provide a list of the jurors remaining, and each side,  
21 beginning with the prosecution, shall indicate thereon its peremptory challenge to one juror at a  
22 time in regular turn until all peremptory challenges are exhausted or waived. The clerk shall then  
23 call the remaining jurors, or so many of them as shall be necessary to constitute the jury,  
24 including any alternate jurors, and the persons whose names are so called shall constitute the  
25 jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless  
26 otherwise ordered by the court prior to voir dire.

27 (3) In courts using lists of prospective jurors generated in random order by computer, the  
28 clerk may call the jurors in that random order.

29 (b) The court may permit counsel or the defendant to conduct the examination of the  
30 prospective jurors or may itself conduct the examination. In the latter event, the court may permit  
31 counsel or the defendant to supplement the examination by such further inquiry as it deems  
32 proper, or may itself submit to the prospective jurors additional questions requested by counsel  
33 or the defendant. Prior to examining the jurors, the court may make a preliminary statement of  
34 the case. The court may permit the parties or their attorneys to make a preliminary statement of  
35 the case, and notify the parties in advance of trial.

36 (c) A challenge may be made to the panel or to an individual juror.

37 (1) The panel is a list of jurors called to serve at a particular court or for the trial of a  
38 particular action. A challenge to the panel is an objection made to all jurors summoned and may  
39 be taken by either party.

40 (i) A challenge to the panel can be founded only on a material departure from the procedure  
41 prescribed with respect to the selection, drawing, summoning and return of the panel.

42 (ii) The challenge to the panel shall be taken before the jury is sworn and shall be in writing  
43 or ~~recorded by the reporter~~ : made upon the record. It shall specifically set forth the facts  
44 constituting the grounds of the challenge.



1 (iii) If a challenge to the panel is opposed by the adverse party, a hearing may be had to try  
2 any question of fact upon which the challenge is based. The jurors challenged, and any other  
3 persons, may be called as witnesses at the hearing thereon.

4 (iv) The court shall decide the challenge. If the challenge to the panel is allowed, the court  
5 shall discharge the jury so far as the trial in question is concerned. If a challenge is denied, the  
6 court shall direct the selection of jurors to proceed.

7 (2) A challenge to an individual juror may be either peremptory or for cause. A challenge to  
8 an individual juror may be made only before the jury is sworn to try the action, except the court  
9 may, for good cause, permit it to be made after the juror is sworn but before any of the evidence  
10 is presented. In challenges for cause the rules relating to challenges to a panel and hearings  
11 thereon shall apply. All challenges for cause shall be taken first by the prosecution and then by  
12 the defense.

13 (d) A peremptory challenge is an objection to a juror for which no reason need be given. In  
14 capital cases, each side is entitled to 10 peremptory challenges. In other felony cases each side is  
15 entitled to four peremptory challenges. In misdemeanor cases, each side is entitled to three  
16 peremptory challenges. If there is more than one defendant the court may allow the defendants  
17 additional peremptory challenges and permit them to be exercised separately or jointly.

18 (e) ~~The~~ A challenge for cause is an objection to a particular juror and shall be heard and  
19 determined by the court. The juror challenged and any other person may be examined as a  
20 witness on the hearing of such challenge. A challenge for cause may be taken on one or more of  
21 the following grounds:- On its own motion the court may remove a juror upon the same grounds.

22 (1) Want of any of the qualifications prescribed by law.

23 (2) Any mental or physical infirmity which renders one incapable of performing the duties of  
24 a juror.

25 (3) Consanguinity or affinity within the fourth degree to the person alleged to be injured by  
26 the offense charged, or on whose complaint the prosecution was instituted.

27 (4) The existence of any social, legal, business, fiduciary or other relationship between the  
28 prospective juror and any party, witness or person alleged to have been victimized or injured by  
29 the defendant, which relationship when viewed objectively, would suggest to reasonable minds  
30 that the prospective juror would be unable or unwilling to return a verdict which would be free of  
31 favoritism. A prospective juror shall not be disqualified solely because ~~he~~ the juror is indebted to  
32 or employed by the state or a political subdivision thereof.

33 (5) Having been or being the party adverse to the defendant in a civil action, or having  
34 complained against or having been accused by ~~him~~ the defendant in a criminal prosecution;

35 (6) Having served on the grand jury which found the indictment.

36 (7) Having served on a trial jury which has tried another person for the particular offense  
37 charged.

38 (8) Having been one of a jury formally sworn to try the same charge, and whose verdict was  
39 set aside, or which was discharged without a verdict after the case was submitted to it.

40 (9) Having served as a juror in a civil action brought against the defendant for the act charged  
41 as an offense.

42 (10) If the offense charged is punishable with death, the entertaining of ~~such conscientious~~  
43 opinions about the death penalty as would preclude the juror from voting to impose the death  
44 penalty following conviction or would require the juror to impose the death penalty following  
45 conviction regardless of the facts.

1 (11) Because ~~he~~ the juror is or, within one year preceding, has been engaged or interested in  
2 carrying on any business, calling or employment, the carrying on of which is a violation of law,  
3 where defendant is charged with a like offense.

4 (12) Because ~~he~~ the juror has been a witness, either for or against the defendant on the  
5 preliminary examination or before the grand jury.

6 (13) Having formed or expressed an unqualified opinion or belief as to whether the defendant  
7 is guilty or not guilty of the offense charged. or

8 ~~(14) that a state of mind exists on the part of the juror with reference to the cause, or to either~~  
9 ~~party, which will prevent him from acting impartially and without prejudice to the substantial~~  
10 ~~rights of the party challenging; but no person shall be disqualified as a juror by reason of having~~  
11 ~~formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded~~  
12 ~~upon public rumor, statements in public journals or common notoriety, if it satisfactorily appears~~  
13 ~~to the court that the juror can and will, notwithstanding such opinion, act impartially and fairly~~  
14 ~~upon the matter to be submitted to him.~~

15 (14) Conduct, responses, state of mind or other circumstances that reasonably lead the court  
16 to conclude the juror is not likely to act impartially. No person may serve as a juror, if  
17 challenged, unless the judge is convinced the juror can and will act impartially and fairly.

18 (f) Peremptory challenges shall be taken first by the prosecution and then by the defense  
19 alternately. Challenges for cause shall be completed before peremptory challenges are taken.

20 (g) The court may direct that alternate jurors be ~~impanelled.~~ impaneled. Alternate jurors, in  
21 the order in which they are called, shall replace jurors who ~~are, or become,~~ prior to the time the  
22 jury retires to consider its verdict, become unable or disqualified to perform their duties. The  
23 prosecution and defense shall each have one additional peremptory challenge for each alternate  
24 juror to be chosen. Alternate jurors shall be selected at the same time and in the same manner,  
25 shall have the same qualifications, shall be subject to the same examination and challenges, shall  
26 take the same oath and ~~enjoy the same privileges as regular jurors.~~ shall have the same functions,  
27 powers, and privileges as principal jurors. Except in bifurcated proceedings, an alternate juror  
28 who does not replace a principal juror shall be discharged when the jury retires to consider its  
29 verdict. The identity of the alternate jurors may be withheld until the jurors begin deliberations.

30 ~~(h) A statutory exemption from service as a juror is a privilege of the person exempted and is~~  
31 ~~not a ground for challenge for cause.~~

32 ~~(h)~~ (h) When the jury is selected an oath shall be administered to the jurors, in substance, that  
33 they and each of them will well and truly try the matter in issue between the parties, and render a  
34 true verdict according to the evidence and the instructions of the court.

35 Advisory Committee Note: Paragraph (b). The preliminary statement of the case does not  
36 serve the same purpose as the opening statement presented after the jury is selected. The  
37 preliminary statement of the case serves only to provide some brief context in which the jurors  
38 might more knowledgeably answer questions during voir dire. A preliminary opening statement  
39 is not required and may serve no useful purpose in short trials or trials with relatively simple  
40 issues. The judge should be particularly attuned to prevent argument or posturing at this early  
41 stage of the trial.

42 Paragraph (e)(14). The Utah Supreme Court has noted a tendency of trial court judges to rule  
43 against a challenge for cause in the face of legitimate questions about a juror's biases. The  
44 Supreme Court limited the following admonition to capital cases, but it is a sound philosophy  
45 even in trials of lesser consequence.

1 [W]e take this opportunity to address an issue of growing concern to this court. We are  
2 perplexed by the trial courts' frequent insistence on passing jurors for cause in death  
3 penalty cases when legitimate concerns about their suitability have been raised during  
4 voir dire. While the abuse-of-discretion standard of review affords trial courts wide  
5 latitude in making their for-cause determinations, we are troubled by their tendency to  
6 "push the edge of the envelope," especially when capital voir dire panels are so large and  
7 the death penalty is at issue. Moreover, capital cases are extremely costly, in terms of  
8 both time and money. Passing questionable jurors increases the drain on the state's  
9 resources and jeopardizes an otherwise valid conviction and/or sentence. ... If a party  
10 raises legitimate questions as to a potential juror's beliefs, biases, or physical ability to  
11 serve, the potential juror should be struck for cause, even where it would not be legally  
12 erroneous to refuse. State v. Carter, 888 P.2d 629 (Utah 1995).

13 In determining challenges for cause, the task of the judge is to find the proper balance. It is  
14 not the judge's duty to seat a jury from a too-small venire panel or to seat a jury as quickly as  
15 possible. Although thorough questioning of a juror to determine the existence, nature and extent  
16 of a bias is appropriate, it is not the judge's duty to extract the "right" answer from or to  
17 "rehabilitate" a juror. The judge should accept honest answers to understood questions and,  
18 based on that evidence, make the sometimes difficult decision to seat only those jurors the judge  
19 is convinced will act fairly and impartially. This higher duty demands a sufficient venire panel  
20 and sufficient voir dire. The trial court judge enjoys considerable discretion in limiting voir dire  
21 when there is no apparent link between a question and potential bias, but "when proposed voir  
22 dire questions go directly to the existence of an actual bias, that discretion disappears. The trial  
23 court must allow such inquiries." The court should ensure the parties have a meaningful  
24 opportunity to explore grounds for challenges for cause and to ask follow-up questions, either  
25 through direct questioning or questioning by the court.

26 The objective of a challenge for cause is to remove from the venire panel persons who cannot  
27 act impartially in deliberating upon a verdict. The lack of impartiality may be due to some bias  
28 for or against one of the parties; it may be due to an opinion about the subject matter of the  
29 action or about the action itself. The civil rules of procedure have a few - and the criminal rules  
30 many more - specific circumstances, usually a relationship with a party or a circumstance of the  
31 juror, from which the bias of the juror is inferred. In addition to these enumerated grounds for a  
32 challenge for cause, both the civil rules and the criminal rules close with the following grounds:  
33 formulation by the juror of a state of mind that will prevent the juror from acting impartially.  
34 However, the rules go on to provide that no person shall be disqualified as a juror by reason of  
35 having formed an opinion upon the matter if it satisfactorily appears to the court that the person  
36 will, notwithstanding that opinion, act impartially.

37 The amendments focus on the "state of mind" clause. In determining whether a person can  
38 act impartially, the court should focus not only on that person's state of mind but should consider  
39 the totality of the circumstances. These circumstances might include the experiences, conduct,  
40 statements, opinions, or associations of the juror. Rather than determining that the juror is  
41 "prevented" from acting impartially, the court should determine whether the juror "is not likely  
42 to act impartially." These amendments conform to the directive of the Supreme Court: If there is  
43 a legitimate question about the ability of a person to act impartially, the court should remove that  
44 person from the panel.

45 There is no need to modify this determination with the statement that a juror who can set

1 aside an opinion based on public journals, rumors or common notoriety and act impartially  
2 should not be struck. Having read or heard of the matter and even having an opinion about the  
3 matter do not meet the standard of the rule. Well-informed and involved citizens are not  
4 automatically to be disqualified from jury service. Sound public policy supports knowledgeable,  
5 involved citizens as jurors. The challenge for the court is to evaluate the impact of this extra-  
6 judicial information on the ability of the person to act impartially. Information and opinions  
7 about the case remain relevant to but not determinative of the question: “Will the person be a fair  
8 and impartial juror?”

9 In stating that no person may serve as a juror unless the judge is “convinced” the juror will  
10 act impartially, the Committee uses the term “convinced” advisedly. The term is not intended to  
11 suggest the application of a clear and convincing standard of proof in determining juror  
12 impartiality, such a high standard being contrary to the Committee’s objectives. Nor is the term  
13 intended to undermine the long-held presumption that potential jurors who satisfy the basic  
14 requirements imposed by statutes and rules are qualified to serve. Rather, the term is intended to  
15 encourage the trial judge to be thorough and deliberative in evaluating challenges for cause.  
16 Although not an evidentiary standard at all, the term “convinced” implies a high standard for  
17 judicial decision-making. Review of the decision should remain limited to an abuse of discretion.

18 This new standard for challenges for cause represents a balance more easily stated than  
19 achieved. These amendments encourage judges to exercise greater care in evaluating challenges  
20 for cause and to resolve legitimate doubts in favor of removal. This may mean some jurors now  
21 removed by peremptory challenge will be removed instead for cause. It may also mean the court  
22 will have to summon more prospective jurors for voir dire. Whether lawyers will use fewer  
23 peremptory challenges will have to await the judgment of experience.

24 Rule 19. Instructions.

25 (a) After the jury is sworn and before opening statements, the court may instruct the jury  
26 concerning the jurors’ duties and conduct, the order of proceedings, the elements and burden of  
27 proof for the alleged crime, and the definition of terms. The court may instruct the jury  
28 concerning any matter stipulated to by the parties and agreed to by the court and any matter the  
29 court in its discretion believes will assist the jurors in comprehending the case. Preliminary  
30 instructions shall be in writing and a copy provided to each juror. At the final pretrial conference  
31 or at such other time as the court directs, a party may file a written request that the court instruct  
32 the jury on the law as set forth in the request. The court shall inform the parties of its action upon  
33 a requested instruction prior to instructing the jury, and it shall furnish the parties with a copy of  
34 its proposed instructions, unless the parties waive this requirement.

35 (b) During the course of the trial, the court may instruct the jury on the law if the instruction  
36 will assist the jurors in comprehending the case. Prior to giving the written instruction, the court  
37 shall advise the parties of its intent to do so and of the content of the instruction. A party may  
38 request an interim written instruction.

39 ~~(a)-(c)~~ At the close of the evidence or at such earlier time as the court reasonably directs, any  
40 party may file written request that the court instruct the jury on the law as set forth in the request.  
41 At the same time copies of such requests shall be furnished to the other parties. The court shall  
42 inform counsel of its proposed action upon the request; and it shall furnish counsel with a copy  
43 of its proposed instructions, unless the parties stipulate that such instructions may be given  
44 orally, or otherwise—waive this requirement. Final instructions shall be in writing and at least one

1 copy provided to the jury. The court shall provide a copy to any juror who requests one and may,  
2 in its discretion, provide a copy to all jurors.

3 ~~(b)-(d)~~ Upon each written request so presented and given, or refused, the court shall endorse  
4 its decision and shall initial or sign it. If part be given and part refused, the court shall  
5 distinguish, showing by the endorsement what part of the charge was given and what part was  
6 refused.

7 ~~(e)-(e)~~ Objections to written instructions shall be made before the instructions are given to the  
8 jury. Objections to oral instructions may be made after they are given to the jury, but before the  
9 jury retires to consider its verdict. The court shall provide an opportunity to make objections  
10 outside the hearing of the jury. Unless a party objects to an instruction or the failure to give an  
11 instruction, the instruction may not be assigned as error except to avoid a manifest injustice. No  
12 party may assign as error any portion of the charge or omission therefrom unless he objects  
13 thereto before the jury is instructed, stating distinctly. In stating the objection the party shall  
14 identify the matter to which he objects—the objection is made and the ground of his—the objection.  
15 Notwithstanding a party's failure to object, error may be assigned to instructions in order to avoid  
16 a manifest injustice.

17 ~~(d)-(f)~~ The court shall not comment on the evidence in the case, and if the court refers to any  
18 of the evidence, it shall instruct the jury that they are the exclusive judges of all questions of fact.

19 (e) Arguments of the respective parties shall be made after the court has ~~instructed~~ given the  
20 jury its final instructions. Unless otherwise provided by law, any limitation upon time for  
21 argument shall be within the discretion of the court.

## 22 Utah Rules of Juvenile Procedure

### 23 Rule 4. Time.

24 (a) In computing time under these rules, the day of the act, event or default from which the  
25 designated period of time begins to run shall not be included. The last day of the period shall be  
26 included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the  
27 end of the next day which is not a Saturday, Sunday or legal holiday. When a period of time  
28 allowed is less than 11 days, without reference to any additional time under subsection (d),  
29 intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

30 (b) The court may, with or without motion or notice, for cause shown, order the time period  
31 enlarged if request is made before the period has expired. The court may consider a motion to  
32 grant an enlargement of a time period made after the period has expired, and may grant the  
33 motion, if there is a reasonable excuse for failure to act within the period.

34 (c) A written motion, other than one which may be heard ex parte, and notice of the hearing  
35 shall be served not later than five days before the time specified for the hearing, unless a  
36 different period is fixed by these rules or by court order. An order fixing the period of time may  
37 for cause shown be made on an ex parte application. When the motion is supported by an  
38 affidavit, the affidavit shall be served with the motion, and opposing affidavits may be served not  
39 later than one day before the hearing unless otherwise ordered by the court.

40 (d) Whenever a party has the right or is required to do some act or take some proceedings  
41 within a prescribed time period after the service of a notice or other paper upon the party and the  
42 notice or paper is served by mail, three days shall be added to the prescribed period as calculated  
43 under subsection (a). Saturdays, Sundays, and legal holidays shall be included in the  
44 computation of any three-day period under this subsection, except that if the last day of the three-

1 day period is a Saturday, Sunday, or a legal holiday, the period shall run until the end of the next  
2 day which is not a Saturday, Sunday, or a legal holiday.

3 Rule 41. Burden of proof.

4 The burden of proof in matters brought before the juvenile court shall be as follows:

5 (a) criminal and delinquency cases must be proved beyond a reasonable doubt;

6 (b) neglect, abuse and dependency cases and cases involving the permanent deprivation of  
7 parental rights must be proved by clear and convincing evidence unless otherwise provided by  
8 law;

9 (c) matters regarding child custody, support, and visitation certified by the district court to  
10 the juvenile court must be proved by a preponderance of the evidence; and

11 (d) motions and matters regarding protective orders must be proved by a preponderance of  
12 the evidence.

13 Advisory Committee Note. Paragraph (b) has been amended to acknowledge that other  
14 bodies of law, such as the Indian Child Welfare Act, may provide a burden of proof different  
15 than clear and convincing evidence.

16 Utah Rules of Evidence

17 Rule 103. Rulings on evidence.

18 (a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or  
19 excludes evidence unless a substantial right of the party is affected, and

20 (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to  
21 strike appears of record, stating the specific ground of objection, if the specific ground was not  
22 apparent from the context; or

23 (2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence  
24 was made known to the court by offer or was apparent from the context within which questions  
25 were asked. Once the court makes a definitive ruling on the record admitting or excluding  
26 evidence, either at or before trial, a party need not renew an objection or offer of proof to  
27 preserve a claim of error for appeal.

28 (b) Record of offer and ruling. The court may add any other or further statement which  
29 shows the character of the evidence, the form in which it was offered, the objection made, and  
30 the ruling thereon. It may direct the making of an offer in question and answer form.

31 (c) Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable,  
32 so as to prevent inadmissible evidence from being suggested to the jury by any means, such as  
33 making statements or offers of proof or asking questions in the hearing of the jury.

34 (d) Plain error. Nothing in this rule precludes taking notice of plain errors affecting  
35 substantial rights although they were not brought to the attention of the court.

36 Advisory Committee Note B This rule is the federal rule, verbatim. The 2001 amendment  
37 adopts changes made in Federal Rule of Evidence 103(a) effective December 1, 2000.

38 Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.

39 (a) Character evidence generally. Evidence of a person's character or a trait of character is  
40 not admissible for the purpose of proving action in conformity therewith on a particular  
41 occasion, except:

42 (1) Character of accused. Evidence of a pertinent trait of character offered by an accused, or  
43 by the prosecution to rebut the same; or if evidence of a trait of character of the alleged victim of

1 the crime is offered by the accused and admitted under Rule 404(a)(2), evidence of the same trait  
2 of character of the accused offered by the prosecution;

3 (2) Character of alleged victim. Evidence of a pertinent trait of character of the alleged victim  
4 of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a  
5 character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case  
6 to rebut evidence that the alleged victim was the first aggressor;

7 (3) Character of witness. Evidence of the character of a witness, as provided in Rules 607,  
8 608, and 609.

9 (b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs or acts is not admissible  
10 to prove the character of a person in order to show action in conformity therewith. It may,  
11 however, be admissible for other purposes, such as proof of motive, opportunity, intent,  
12 preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon  
13 request by the accused, the prosecution in a criminal case shall provide reasonable notice in  
14 advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the  
15 nature of any such evidence it intends to introduce at trial. In other words, evidence offered  
16 under this rule is admissible if it is relevant for a non-character purpose and meets the  
17 requirements of Rules 402 and 403.

18 Advisory Committee Note B Rule 404 is now Federal Rule of Evidence 404 verbatim. The  
19 2001 amendments add the notice provisions already in the federal rule, add the amendments  
20 made to the federal rule effective December 1, 2000, and delete language added to the Utah Rule  
21 404(b) in 1998. However, the deletion of that language is not intended to reinstate the holding of  
22 State v. Doporto, 935 P.2d 484 (Utah 1997). Evidence sought to be admitted under Rule 404(b)  
23 must also conform with Rules 402 and 403 to be admissible.

24 Rule 803. Hearsay exceptions; availability of declarant immaterial.

25 The following are not excluded by the hearsay rule, even though the declarant is available as  
26 a witness:

27 (1) Present sense impression. A statement describing or explaining an event or condition  
28 made while the declarant was perceiving the event or condition or immediately thereafter.

29 (2) Excited utterance. A statement relating to a startling event or condition made while the  
30 declarant was under the stress of excitement caused by the event or condition.

31 (3) Then existing mental, emotional, or physical condition. A statement of the declarant's  
32 then existing state of mind, emotion, sensation, or physical condition (such as intent, plan,  
33 motive, design, mental feeling, pain, and bodily health), but not including a statement of memory  
34 or belief to prove the fact remembered or believed unless it relates to the execution, revocation,  
35 identification, or terms of declarant's will.

36 (4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes  
37 of medical diagnosis or treatment and describing medical history, or past or present symptoms,  
38 pain, or sensations, or the inception or general character of the cause or external source thereof  
39 insofar as reasonably pertinent to diagnosis or treatment.

40 (5) Recorded recollection. A memorandum or record concerning a matter about which a  
41 witness once had knowledge but now has insufficient recollection to enable the witness to testify  
42 fully and accurately, shown to have been made or adopted by the witness when the matter was  
43 fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the  
44 memorandum or record may be read into evidence but may not itself be received as an exhibit  
45 unless offered by an adverse party.

1 (6) Records of regularly conducted activity. A memorandum, report, record, or data  
2 compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the  
3 time by, or from information transmitted by, a person with knowledge, if kept in the course of a  
4 regularly conducted business activity, and if it was the regular practice of that business activity to  
5 make the memorandum, report, record, or data compilation, all as shown by the testimony of the  
6 custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule  
7 902(12), or a statute permitting certification, unless the source of information or the method or  
8 circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this  
9 paragraph includes business, institution, association, profession, occupation, and calling of every  
10 kind, whether or not conducted for profit.

11 (7) Absence of entry in records kept in accordance with the provisions of paragraph (6).  
12 Evidence that a matter is not included in the memoranda, reports, records, or data compilations,  
13 in any form, kept in accordance with the provisions of Paragraph (6), to prove the nonoccurrence  
14 or nonexistence of the matter, if the matter was of a kind of which a memorandum, report,  
15 record, or data compilation was regularly made and preserved, unless the sources of information  
16 or other circumstances indicate lack of trustworthiness.

17 (8) Public records and reports. Records, reports, statements, or data compilations, in any  
18 form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B)  
19 matters observed pursuant to duty imposed by law as to which matters there was a duty to report,  
20 excluding, however, in criminal cases matters observed by police officers and other law  
21 enforcement personnel, or (C) in civil actions and proceedings and against the Government in  
22 criminal cases, factual findings resulting from an investigation made pursuant to authority  
23 granted by law, unless the sources of information or other circumstances indicate lack of  
24 trustworthiness.

25 (9) Records of vital statistics. Records or data compilations, in any form, of births, fetal  
26 deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to  
27 requirements of law.

28 (10) Absence of public record or entry. To prove the absence of a record, report, statement,  
29 or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a  
30 record, report, statement, or data compilation in any form, was regularly made and preserved by  
31 a public office or agency, evidence in the form of a certification in accordance with Rule 902, or  
32 testimony, that diligent search failed to disclose the record, report, statement, or data  
33 compilation, or entry.

34 (11) Records of religious organization. Statements of births, marriages, divorces, deaths,  
35 legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or  
36 family history, contained in a regularly kept record of a religious organization.

37 (12) Marriage, baptismal, and similar certificates. Statements of fact contained in a  
38 certificate that the maker performed a marriage or other ceremony or administered a sacrament,  
39 made by a clergyman, public official, or other person authorized by the rules or practices of a  
40 religious organization or by law to perform the act certified, and purporting to have been issued  
41 at the time of the act or within a reasonable time thereafter.

42 (13) Family records. Statements of fact concerning personal or family history contained in  
43 family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits,  
44 engravings on urns, crypts, or tombstones, or the like.



1 (14) Records of documents affecting an interest in property. The record of a document  
2 purporting to establish or affect an interest in property, as proof of the content of the original  
3 recorded document and its execution and delivery by each person by whom it purports to have  
4 been executed, if the record is a record of a public office and an applicable statute authorizes the  
5 recording of documents of that kind in that office.

6 (15) Statements in documents affecting an interest in property. A statement contained in a  
7 document purporting to establish or affect an interest in property if the matter stated was relevant  
8 to the purpose of the document, unless dealings with the property since the document was made  
9 have been inconsistent with the truth of the statement or the purport of the document.

10 (16) Statements in ancient documents. Statements in a document in existence twenty years  
11 or more the authenticity of which is established.

12 (17) Market reports, commercial publications. Market quotations, tabulations, lists,  
13 directories, or other published compilations, generally used and relied upon by the public or by  
14 persons in particular occupations.

15 (18) Learned treatises. To the extent called to the attention of an expert witness upon  
16 cross-examination or relied upon by the expert witness in direct examination, statements  
17 contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or  
18 other science or art, established as a reliable authority by the testimony or admission of the  
19 witness or by other expert testimony or by judicial notice. If admitted, the statements may be  
20 read into evidence but may not be received as exhibits.

21 (19) Reputation concerning personal or family history. Reputation among members of a  
22 person's family by blood, adoption, or marriage, or among a person's associates, or in the  
23 community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy,  
24 relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family  
25 history.

26 (20) Reputation concerning boundaries or general history. Reputation in a community  
27 arising before the controversy, as to boundaries of or customs affecting lands in the community,  
28 and reputation as to events of general history important to the community or State or nation in  
29 which located.

30 (21) Reputation as to character. Reputation of a person's character among associates or in the  
31 community.

32 (22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or  
33 upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a  
34 crime punishable by death or imprisonment in excess of one year, to prove any fact essential to  
35 sustain the judgment, but not including, when offered by the prosecution in a criminal  
36 prosecution for purposes other than impeachment, judgments against persons other than the  
37 accused. The pendency of an appeal may be shown but does not affect admissibility.

38 (23) Judgment as to personal, family or general history, or boundaries. Judgments as proof  
39 of matters of personal, family or general history, or boundaries, essential to the judgment, if the  
40 same would be provable by evidence of reputation.

41 (24) Other exceptions. A statement not specifically covered by any of the foregoing  
42 exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court  
43 determines that (A) the statement is offered as evidence of a material fact; (B) the statement is  
44 more probative on the point for which it is offered than any other evidence which the proponent  
45 can procure through reasonable efforts; and (C) the general purpose of these rules and the

1 interests of justice will best be served by admission of the statement into evidence. However, a  
2 statement may not be admitted under this exception unless the proponent of it makes known to  
3 the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with  
4 a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the  
5 particulars of it, including the name and address of the declarant.

6 Advisory Committee Note B This rule is the federal rule verbatim. The 2001 amendment  
7 adopts changes made to Federal Rule of Evidence 803(6) effective December 1, 2000.

8 Rule 902 . Self-authentication

9 Extrinsic evidence of authenticity as a condition precedent to admissibility is not required  
10 with respect to the following:

11 (1) Domestic public documents under seal. A document bearing a seal purporting to be that  
12 of the United States, or of any state, district, commonwealth, territory, or insular possession  
13 thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political  
14 subdivision, department, officer, or agency thereof, and a signature purporting to be an  
15 attestation or execution.

16 (2) Domestic public documents not under seal. A document purporting to bear the signature  
17 in the official capacity of an officer or employee of any entity included in Paragraph (1) hereof,  
18 having no seal, if a public officer having a seal and having official duties in the district or  
19 political subdivision of the officer or employee certifies under seal that the signer has the official  
20 capacity and that the signature is genuine.

21 (3) Foreign public documents. A document purporting to be executed or attested in an  
22 official capacity by a person authorized by the laws of a foreign country to make the execution or  
23 attestation, and accompanied by a final certification as to the genuineness of the signature and  
24 official position (A) of the executing or attesting person, or (B) of any foreign official whose  
25 certificate of genuineness of signature and official position relates to the execution or attestation  
26 or is in a chain of certificates of genuineness of signature and official position relating to the  
27 execution or attestation. A final certification may be made by a secretary of embassy or legation,  
28 consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or  
29 consular official of the foreign country assigned or accredited to the United States. If reasonable  
30 opportunity has been given to all parties to investigate the authenticity and accuracy of official  
31 documents, the court may, for good cause shown, order that they be treated as presumptively  
32 authentic without final certification or permit them to be evidenced by an attested summary with  
33 or without final certification.

34 (4) Certified copies of public records. A copy of an official record or report or entry therein,  
35 or of a document authorized by law to be recorded or filed and actually recorded or filed in a  
36 public office, including data compilations in any form, certified as correct by the custodian or  
37 other person authorized to make the certification, by certificate complying with Paragraph (1),  
38 (2), or (3) of this rule or complying with any law of the United States or of this state.

39 (5) Official publications. Books, pamphlets, or other publications purporting to be issued by  
40 public authority.

41 (6) Newspapers and periodicals. Printed materials purporting to be newspapers or  
42 periodicals.

43 (7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been  
44 affixed in the course of business and indicating ownership, control, or origin.

1 (8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment  
2 executed in the manner provided by law by a notary public or other officer authorized by law to  
3 take acknowledgments.

4 (9) Commercial paper and related documents. Commercial paper, signatures thereon, and  
5 documents relating thereto to the extent provided by general commercial law.

6 (10) Methods provided by statute or rule. Any method of authentication or identification  
7 provided by court rule, statute, or as provided in the constitution of this state.

8 (11) Certified domestic records of regularly conducted activity. The original or a duplicate of  
9 a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if  
10 accompanied by an affidavit or a written declaration of its custodian or other qualified person,  
11 certifying that:

12 (A) the record was made at or near the time of the occurrence of the matters set forth by, or  
13 from information transmitted by, a person with knowledge of those matters;

14 (B) the record was kept in the course of the regularly conducted activity;

15 (C) the record was made by the regularly conducted activity as a regular practice; and

16 (D) the person certifying the records does so under penalty of making a false statement in an  
17 official proceeding.

18 The affidavit or declaration must be signed in a manner that, if falsely made, would subject  
19 the maker to criminal penalty under the laws where the declaration is signed. A party intending  
20 to offer a record into evidence under this paragraph must provide written notice of that intention  
21 to all adverse parties, and must make the record and certification available for inspection  
22 sufficiently in advance of their offer into evidence to provide an adverse party with a fair  
23 opportunity to challenge them.

24 (12) Certified foreign records of regularly conducted activity. In a civil case, the original or a  
25 duplicate of a foreign record of regularly conducted activity that would be admissible under Rule  
26 803(6) if accompanied by an affidavit or a written declaration by its custodian or other qualified  
27 person certifying that:

28 (A) the record was made at or near the time of the occurrence of the matters set forth by, or  
29 from information transmitted by, a person with knowledge of those matters;

30 (B) the record was kept in the course of the regularly conducted activity;

31 (C) the record was made by the regularly conducted activity as a regular practice; and

32 (D) the person certifying the records does so under penalty of making a false statement in an  
33 official proceeding.

34 The affidavit or declaration must be signed in a manner that, if falsely made, would subject  
35 the maker to criminal penalty under the laws where the declaration is signed. A party intending  
36 to offer a record into evidence under this paragraph must provide written notice of that intention  
37 to all adverse parties, and must make the record and declaration available for inspection  
38 sufficiently in advance of their offer into evidence to provide an adverse party with a fair  
39 opportunity to challenge them.

40 Advisory Committee Note B The amendment to Rule 803(6) and the addition of Rules  
41 902(11) and 902(12) were made to track the changes made to Federal Rule of Evidence 803(6)  
42 and the adoption of Federal Rules 902(11) and 902(12), effective December 1, 2000. The  
43 changes to the federal rules benefit from a federal statute allowing the use of declarations  
44 without notarization. Utah has no comparable statute, so the requirements for declarations used  
45 under the rule are included within the rule itself.

1 Code of Judicial Administration

2 Rule 1-205. Standing and ad hoc committees.

3 Intent:

4 To establish standing and ad hoc committees to assist the Council and provide  
5 recommendations on topical issues.

6 To establish uniform terms and a uniform method for appointing committee members.

7 To provide for a periodic review of existing committees to assure that their activities are  
8 appropriately related to the administration of the judiciary.

9 Applicability:

10 This rule shall apply to the internal operation of the Council.

11 Statement of the Rule:

12 (1) Standing committees.

13 (A) Establishment. The following standing committees of the Council are hereby established:

14 (i) Technology Committee;

15 (ii) Uniform Fine/Bail Schedule Committee;

16 (iii) Performance Evaluation Committee;

17 (iv) Ethics Advisory Committee;

18 (v) Justice Court Standards Committee;

19 (vi) Judicial Branch Education Committee;

20 (vii) Court Facility Planning Committee; and

21 (viii) Committee on Children and Family Law.

22 (B) Composition.

23 (i) The Technology Committee shall be comprised of one judge from each court of record,  
24 one justice court judge, one lawyer recommended by the Board of Bar Commissioners, two court  
25 executives, two court clerks and two staff members from the Administrative Office, all of whom  
26 shall be voting members. The Committee may add additional non-voting, ad hoc members as  
27 needed.

28 (ii) The Uniform Fine/Bail Schedule Committee shall be comprised of one district court  
29 judge who has experience with a felony docket, three district court judges who have experience  
30 with a misdemeanor docket, one juvenile court judge and three justice court judges.

31 (iii) The Performance Evaluation Committee shall be comprised of one judge from each  
32 court of record, one justice court judge, one active senior judge, one court commissioner, one  
33 Bar Commissioner recommended by the president of the State Bar, two practicing attorneys who  
34 are members of the Bar in good standing, and three lay members. The terms of office of the two  
35 practicing attorneys shall be staggered. The Judicial Council shall appoint one of the two  
36 practicing attorneys to serve as chair.

37 (iv) The Ethics Advisory Committee shall be comprised of one judge from the Court of  
38 Appeals, one district court judge from Judicial Districts 2, 3, or 4, one district court judge from  
39 Judicial Districts 1, 5, 6, 7, or 8, one juvenile court judge, one justice court judge, and an  
40 attorney from either the Bar or a college of law.

41 (v) The Justice Court Standards Committee shall be comprised of one municipal justice court  
42 judge from a rural area, one municipal justice court judge from an urban area, one county justice  
43 court judge from a rural area, and one county justice court judge from an urban area, all  
44 appointed by the Board of Justice Court Judges; one mayor from either Utah, Davis, Weber or  
45 Salt Lake Counties, and one mayor from the remaining counties, both appointed by the Utah

1 League of Cities and Towns; one county commissioner from either Utah, Davis, Weber or Salt  
2 Lake Counties, and one county commissioner from the remaining counties, both appointed by  
3 the Utah Association of Counties; a member of the Bar from Utah, Davis, Weber or Salt Lake  
4 Counties, and a member of the Bar from the remaining counties, both appointed by the Bar  
5 Commission; and a judge of a court of record appointed by the Presiding Officer of the Council.  
6 All Committee members shall be appointed for ~~two~~four year staggered terms.

7 (vi) The Judicial Branch Education Committee shall be comprised of one judge from an  
8 appellate court, one district court judge from Judicial Districts 2, 3, or 4, one district court judge  
9 from Judicial Districts 1, 5, 6, 7, or 8, one juvenile court judge, one justice court judge, one state  
10 level administrator, the Human Resource Management Director, one court executive, one  
11 juvenile court probation representative, two court clerks from different levels of court and  
12 different judicial districts, one data processing manager, one adult educator from higher  
13 education, and such other members as may be appointed by the Council. The Human Resource  
14 Management Director and the adult educator shall serve as non-voting members. The state level  
15 administrator and the Human Resource Management Director shall serve as permanent  
16 Committee members.

17 (vii) The Court Facility Planning Committee shall be comprised of one judge from each level  
18 of trial court, one appellate court judge, the state court administrator, a trial court executive, and  
19 two business people with experience in the construction or financing of facilities.

20 (viii) The Committee on Children and Family Law shall be comprised of one Senator  
21 appointed by the President of the Senate, one Representative appointed by the Speaker of the  
22 House, the Director of the Department of Human Services or designee, one attorney of the  
23 Executive Committee of the Family Law Section of the Utah State Bar, one attorney with  
24 experience in abuse, neglect and dependency cases, one representative of a child advocacy  
25 organization, one mediator, one professional in the area of child development, one representative  
26 of the community, the Director of the Office of Guardian ad Litem or designee, one court  
27 commissioner, two district court judges, and two juvenile court judges. One of the district court  
28 judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its  
29 discretion the committee may appoint non-members to serve on its subcommittees.

30 (C) Standing committees shall meet as necessary to accomplish their work but a minimum of  
31 once every six months. Standing committees shall report to the Council as necessary but a  
32 minimum of once every six months. Council members may not serve, participate or vote on  
33 standing committees. Standing committees may form subcommittees from their own  
34 membership as they deem advisable. The continued existence and composition of standing  
35 committees shall be reviewed annually.

36 (2) Ad hoc committees. The Council may form ad hoc committees or task forces to consider  
37 topical issues outside the scope of the standing committees and to recommend rules or  
38 resolutions concerning such issues. The Council may set and extend a date for the termination of  
39 any ad hoc committee. The Council may invite non-Council members to participate and vote on  
40 ad hoc committees. Ad hoc committees shall keep the Council informed of their activities. Ad  
41 hoc committees may form sub-committees as they deem advisable. Ad hoc committees shall  
42 disband upon issuing a final report or recommendations to the Council, upon expiration of the  
43 time set for termination, or upon the order of the Council.

44 (3) General provisions.

45 (A) Appointment process.

1 (i) Administrator's responsibilities. The state court administrator shall select a member of the  
2 administrative staff to serve as the administrator for committee appointments. Except as  
3 otherwise provided in this rule, the administrator shall:

4 (a) announce expected vacancies on standing committees two months in advance and  
5 announce vacancies on ad hoc committees in a timely manner;

6 (b) for new appointments, obtain an indication of willingness to serve from each prospective  
7 appointee and information regarding the prospective appointee's present and past committee  
8 service;

9 (c) for reappointments, obtain an indication of willingness to serve from the prospective  
10 reappointee, the length of the prospective reappointee's service on the committee, the attendance  
11 record of the prospective reappointee, the prospective reappointee's contributions to the  
12 committee, and the prospective reappointee's other present and past committee assignments; and

13 (d) present a list of prospective appointees and reappointees to the Council, and, report on  
14 recommendations received regarding the appointment of members and chairs.

15 (ii) Council's responsibilities. The Council shall appoint the chair of each committee and all  
16 committee members not otherwise designated. Whenever practical, appointments shall reflect  
17 geographical, gender, cultural and ethnic diversity.

18 (B) Terms. Except as otherwise provided in this rule, standing committee members shall  
19 serve staggered three year terms. Standing committee members shall not serve more than two  
20 consecutive terms on a committee unless the Council determines that exceptional circumstances  
21 exist which justify service of more than two consecutive terms. Each standing committee may  
22 determine the annual date on which its members' terms expire. If a committee member does not  
23 complete the member's term, a substitute member shall be appointed to complete the balance of  
24 the unexpired term. Appointment shall be through the same process as described in subsection  
25 (A).

26 (C) Members of standing and ad hoc committees may receive reimbursement for actual and  
27 necessary expenses incurred in the execution of their duties as committee members.

28 (D) The Administrative Office shall serve as secretariat to the Council's committees.

29 Rule 2-106.01. Goals of performance evaluation for judicial self improvement.

30 Intent:

31 To specify the goals of performance evaluation for judicial self improvement.

32 Applicability:

33 This rule shall apply to the Judicial Council and to the judges and commissioners of the  
34 courts of record and courts not of record.

35 Statement of the Rule:

36 The goals of the judicial performance evaluation program are to:

37 (1) generate and to provide to judges and commissioners information about their  
38 performance;

39 (2) promote efforts to improve upon judicial performance individually and the performance  
40 of the judiciary in general;

41 (3) improve the design and content of continuing judicial education programs; and

42 (4) protect the independence of judges and commissioners in their obligations under federal  
43 and state constitutions, federal and state statutes and court rules.

44 Rule 2-106.02. Criteria for judicial self improvement.

45 Intent:

1 To specify the criteria for judicial self improvement.

2 Applicability:

3 This rule shall apply to the Judicial Council and to the judges and commissioners of the  
4 courts of record and courts not of record.

5 Statement of the Rule:

6 Judges and commissioners should work to improve performance based upon the following  
7 criteria.

8 (1) Integrity - Factors considered may include but are not limited to:

9 (A) avoidance of impropriety and appearance of impropriety;

10 (B) freedom from personal bias;

11 (C) ability to decide issues based on the law and the facts without regard to the identity of the  
12 parties or counsel, the popularity of the decision or concern for criticism;

13 (D) impartiality of actions; and

14 (E) compliance with the Code of Judicial Conduct.

15 (2) Knowledge and understanding of the law and procedures - Factors considered may  
16 include but are not limited to:

17 (A) the issuance of legally sound decisions;

18 (B) understanding of the substantive, procedural, and evidentiary law of the state;

19 (C) attentiveness to the factual and legal issues before the court; and

20 (D) the proper application of judicial precedents and other appropriate sources of authority.

21 (3) Ability to communicate - Factors considered may include but are not limited to:

22 (A) clarity of bench rulings and other oral communications;

23 (B) quality of written opinions with specific focus on clarity and logic, and the ability to  
24 explain clearly the facts of a case and the legal precedents at issue; and

25 (C) sensitivity to impact of demeanor and other nonverbal communications.

26 (4) Preparation, attentiveness, dignity and control over proceedings - Factors considered may  
27 include but are not limited to:

28 (A) courtesy to all parties and participants; and

29 (B) willingness to permit every person legally interested in a proceeding to be heard, unless  
30 precluded by law.

31 (5) Skills as a manager - Factors considered may include but are not limited to:

32 (A) devoting appropriate time to all pending matters;

33 (B) discharging administrative responsibilities diligently; and

34 (C) where responsibility exists for a calendar, knowledge of the number, age, and status of  
35 pending cases.

36 (6) Punctuality - Factors considered may include but are not limited to:

37 (A) the prompt disposition of pending matters;

38 (B) meeting commitments on time and according to rules of the court; and

39 (C) compliance with the case processing time standard established by the Council.

40 (7) Service to the profession and the public - Factors considered may include but are not  
41 limited to:

42 (A) attendance at and participation in judicial and continuing legal education programs;

43 (B) consistent with the Code of Judicial Conduct, participation in organizations devoted to  
44 improving the justice system;



1 (C) consistent with the highest principles of the law, ensuring that the court is serving the  
2 public and the justice system to the best of its ability and in such a manner as to instill  
3 confidence in the court system; and

4 (D) service within the organizations of the judicial branch of government and in leadership  
5 positions within the judicial branch of government, such as presiding judge, Judicial Council,  
6 Boards of Judges, and standing and ad hoc committees.

7 (8) Effectiveness in working with other judges, commissioners and court personnel - Factors  
8 considered may include but are not limited to:

9 (A) when part of a multi-judge panel, exchanging ideas and opinions with other judges  
10 during the decision-making process;

11 (B) critiquing the work of colleagues;

12 (C) facilitating the administrative responsibilities of other judges and commissioners; and

13 (D) effectively working with court staff.

14 Rule 2-106.03. Information for judicial self improvement.

15 Intent:

16 To specify the information to be generated for judicial self improvement.

17 Applicability:

18 This rule shall apply to the Judicial Council and to judges and commissioners of the courts of  
19 record.

20 Statement of the Rule:

21 (1) Survey of attorneys.

22 (A) Survey scoring. The survey shall be scored as follows.

23 (i) Each question of the attorney survey will have six possible responses: Excellent, More  
24 Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A  
25 favorable response is Excellent, More Than Adequate or Adequate.

26 (ii) Each question shall be scored by dividing the total number of favorable responses by the  
27 total number of all responses, excluding the “No Personal Knowledge” responses. A satisfactory  
28 score for a question is achieved when the ratio of favorable responses is 70% or greater.

29 (B) Surveyor. As used in this Code, the term “Surveyor” means the organization or  
30 individual awarded a contract through procedures established by the state procurement code to  
31 survey respondents regarding the performance of judges.

32 (C) Survey respondents. The clerk for the judge or commissioner or the Administrative  
33 Office of the Courts shall identify as potential respondents all lawyers who have appeared before  
34 the judge or commissioner at a hearing or trial during the preceding two year period or such  
35 shorter period for which the judge or commissioner is being evaluated. The judge or  
36 commissioner shall not review the list of potential respondents.

37 (D) Exclusion from survey respondents.

38 (i) A lawyer who has been appointed as a judge or commissioner shall not be a respondent in  
39 the survey.

40 (ii) By certifying that one or more of the following conditions applies, the judge or  
41 commissioner may exclude an attorney from the list of respondents: The judge or commissioner

42 (a) has referred the lawyer to the Utah State Bar for discipline,

43 (b) has found the lawyer in contempt of court,

44 (c) has sanctioned the lawyer pursuant to rules of procedure,



1 (d) has held the lawyer's law firm jointly responsible under Utah Rule of Civil Procedure  
2 11(c)(1)(A),

3 (e) has presided in a civil or criminal proceeding to which the lawyer is a party, or

4 (f) has been the subject of an affidavit of bias or prejudice under Utah Rule of Civil  
5 Procedure 63 or Utah Rule of Criminal Procedure 29 filed by the attorney in which the attorney  
6 alleges animus of the judge or commissioner toward the attorney.

7 (iii) Other exclusions.

8 (a) A judge may request that the Judicial Council exclude from the survey an attorney who  
9 does not qualify for exclusion under (ii) if the judge believes the attorney will not respond  
10 objectively to the survey. The request must be submitted within 14 days after receiving the form  
11 for excluding lawyers under (ii).

12 (b) In the request, the judge shall explain why the attorney will not respond objectively to the  
13 survey. The judge shall explain why the attorney's behavior has not subjected the attorney to  
14 sanction under the rules of procedure, contempt or referral to the Bar.

15 (c) If the Management Committee determines that the attorney will not respond objectively  
16 to the survey, the Management Committee shall inform the Judicial Council for ratification. If  
17 the Judicial Council ratifies the determination, the Administrative Office of the Courts shall  
18 notify the Surveyor and the Surveyor shall exclude the attorney from the judge's respondent  
19 pool. The determination applies only to the pending attorney survey.

20 (E) Number of survey respondents. For each judge or commissioner who is the subject of a  
21 survey, the Surveyor shall identify 180 respondents or all attorneys appearing before the judge or  
22 commissioner whichever is less.

23 (F) Factors in selecting respondents; response rate. In selecting respondents from potential  
24 respondents, the Surveyor should favor attorneys with a greater number of appearances and  
25 attorneys with more recent appearances, and the Surveyor should limit to 12 the number of  
26 survey questionnaires to which an attorney is asked to respond. The Surveyor may balance these  
27 factors in assigning respondents to particular judges or commissioners. The Surveyor should  
28 pursue a response rate of 70% or more for each judge or commissioner. The goals of this  
29 paragraph are advisory and failure to meet the goals shall not invalidate the survey.

30 (G) Administration of the survey. Judges with a six-year term of office shall be the subject of  
31 a survey in the third year of the term. Justices of the Supreme Court shall be the subject of a  
32 survey in the third and seventh years of the term. Newly appointed judges shall be the subject of  
33 a survey during their second year in office. Court Commissioners shall be the subject of a survey  
34 approximately three years prior to the expiration of their term of appointment.

35 (2) Survey of jurors. A survey of jurors for all district court judges who preside over jury  
36 trials shall be conducted during the third and fourth years prior to evaluation for retention  
37 election. However, a survey of jurors for district court judges serving prior to their initial  
38 retention election shall be conducted during the two years prior to evaluation for retention  
39 election.

40 (A) Survey responses. Each question will have four possible responses: Yes, No, No  
41 Opinion, and No Opportunity to Observe. A note card on which the juror can provide  
42 anonymous comments to the judge shall be attached to the survey questionnaire.

43 (B) Survey scoring. The survey shall be scored as follows:

44 (i) A favorable response is Yes.

1       (ii) Each question shall be scored by dividing the total number of Yes responses by the total  
2       number of Yes plus No responses.

3       (iii) A satisfactory score for a question is achieved when the ratio of favorable responses is  
4       70% or greater.

5       (iv) A judge's performance is satisfactory if:

6       (a) At least 75% of the questions on the survey have a satisfactory score; and

7       (b) The Yes responses to all questions when divided by the total number of Yes plus No  
8       responses to all questions is 70% or greater.

9       (C) Administration of the survey. All jurors rendering a verdict in a case and all jurors,  
10      including alternate jurors, with at least three hours of trial time with the judge shall have the  
11      opportunity to respond to the survey questionnaire.

12      (i) For jurors rendering a verdict. While the jurors are waiting for court to convene after  
13      declaring that they have reached a verdict, or as soon as possible after the jury has been  
14      discharged, the bailiff or clerk in charge of the jury shall provide the jurors with the evaluation  
15      questionnaires and comment note cards and two envelopes. One envelope will be preprinted with  
16      the mailing address of the Surveyor; the other will be preprinted with the name of the judge. The  
17      forms will instruct the jurors to place the comment note cards in the envelope with the judge's  
18      name, to place the survey questionnaires, completed and uncompleted, in the envelope with the  
19      Surveyor's name, and to seal the envelopes. The bailiff or clerk shall deliver the sealed  
20      envelopes to the respective addressees.

21      (ii) For jurors not rendering a verdict. If a juror or alternate juror is discharged prior to  
22      rendering a verdict but after at least three hours of trial time with the judge, the bailiff or clerk in  
23      charge of the jury shall administer the questionnaire to the discharged juror in the same manner  
24      as in paragraph (i) above.

25      Rule 2-106.04. Self improvement process.

26      Intent:

27      To generate and to provide to judges and commissioners information about their  
28      performance.

29      To promote efforts to improve upon judicial performance individually and the performance  
30      of the judiciary in general.

31      Applicability:

32      This rule shall apply to the Judicial Council and to the judges and commissioners of the  
33      courts of record.

34      Statement of the Rule:

35      (1) Evaluation information.

36      (A) The Surveyor shall provide individual survey results to the judge or commissioner  
37      evaluated, to that judge's or commissioner's presiding judge and to any other judge identified by  
38      the subject judge. Without identifying individual judges or commissioners, the Surveyor shall  
39      provide the judge or commissioner with the survey results for that judge's or commissioner's  
40      court level and geographic region.

41      (B) The Administrative Office of the Courts shall provide individual non-survey results to  
42      the judge's or commissioner's presiding judge and to any other judge identified by the subject  
43      judge.

1       (C) The presiding judge's evaluation material shall be provided to the chair of the appropriate  
2 Board of Judges. The chief justice's evaluation material shall be provided to the associate chief  
3 justice.

4       (2) Role of presiding judge.

5       (A) The subject judge may identify a judge in addition to the presiding judge to review the  
6 subject judge's evaluation material. The subject judge shall notify the Administrative Office of  
7 the Courts in writing of the judge's request.

8       (B) The presiding judge and other reviewing judge shall review the evaluation material and  
9 may meet with the subject judge at the request of the presiding judge or other reviewing judge or  
10 of the subject judge. The purpose of the meeting is to identify steps towards self improvement.

11       Rule 2-106.05. Administration of the performance evaluation program for judicial self  
12 improvement.

13       Intent:

14       To provide for the administration of the performance evaluation program for judicial self  
15 improvement.

16       Applicability:

17       This rule shall apply to the Judicial Council and to the Standing Committee on Judicial  
18 Performance Evaluation.

19       Statement of the Rule:

20       (1) The performance evaluation program shall use professionally recognized methods of data  
21 collection which may include surveys, onsite visits, caseload management data and personal  
22 interviews. Information shall be obtained from multiple sources to provide balanced information.  
23 Information from individuals shall be based on personal knowledge of the judge's or  
24 commissioner's performance.

25       (2) The Standing Committee on Judicial Performance Evaluation shall:

26       (A) propose to the Council a schedule of recommended activities and procedures by which to  
27 generate self improvement information;

28       (B) with the Council's approval, provide a schedule of activities and procedures to all judges  
29 and commissioners;

30       (C) report to the Council recommendations for improving self improvement information; and

31       (D) propose to the Council any surveys and amendments. Subjects inquired into by a survey  
32 shall be drawn from but need not include all of the criteria established by Rule 2-106.02.

33       (3) Records and information generated for the self improvement of judges and  
34 commissioners are classified as private records. The survey results for each court level and  
35 geographic region, without identifying individual judges or commissioners, are classified as  
36 public records. Respondents to surveys shall be anonymous.

37       (4) Geographic regions are:

38       (a) Region 1: Judicial Districts 5, 6, 7, and 8;

39       (b) Region 2: Judicial Districts 1 and 2;

40       (c) Region 3: Judicial District 3;

41       (d) Region 4: Judicial District 4; and

42       (e) Region 5: The Supreme Court and the Court of Appeals.

43       Rule 3-110. Judicial performance evaluation for self improvement.

44       Intent:

1 ~~To promote the self improvement of members of the judiciary by establishing a formal~~  
2 ~~judicial performance evaluation program to provide routine periodic information to judges and~~  
3 ~~commissioners on their performance.~~

4 ~~To promote the improvement of the judiciary as a whole by providing the Council with~~  
5 ~~information on the performance of individual judges, commissioners and courts.~~

6 ~~To establish the general criteria for evaluating judicial performance and the methods for~~  
7 ~~fairly, accurately and reliably measuring the performance of an individual judge or~~  
8 ~~commissioner.~~

9 ~~To satisfy the self improvement, as distinguished from certification, requirements of Utah~~  
10 ~~Code Ann. ' 78-3-21(4).~~

11 ~~Applicability:~~

12 ~~This rule shall apply to all judges and commissioners.~~

13 ~~Statement of the Rule:~~

14 ~~(1) Goals of judicial self improvement program ("program").~~

15 ~~(A) The primary goal is to provide self improvement for individual judges and~~  
16 ~~commissioners, and the improvement of the judiciary as a whole.~~

17 ~~(B) The secondary goals are:~~

18 ~~(i) to improve the design and content of continuing judicial education programs; and~~

19 ~~(ii) to provide information useful for the refinement of the Code of Judicial Administration.~~

20 ~~(2) Structure and implementation. The Program shall be structured and implemented so as~~  
21 ~~not to impair the independence of the judiciary.~~

22 ~~(3) Administration and support.~~

23 ~~(A) Ultimate responsibility for the development and implementation of the Program is vested~~  
24 ~~in the Council.~~

25 ~~(B) The day to day management of the Program, while the responsibility of the Council,~~  
26 ~~shall be supervised by the Judicial Performance Evaluation Committee.~~

27 ~~(C) Staff support and adequate funding shall be provided by the Administrative Office to~~  
28 ~~support the Program and to ensure its high quality.~~

29 ~~(D) The Committee shall meet a minimum of four times per year to review the Program and~~  
30 ~~shall submit to the Council an annual report containing summary data and recommendations for~~  
31 ~~the improvement of the Program. Individuals shall not be identified in this report.~~

32 ~~(4) Evaluation criteria.~~

33 ~~(A) Judges and commissioners shall be evaluated for self improvement based upon the~~  
34 ~~following specific criteria:~~

35 ~~(i) Integrity — Factors considered may include but are not limited to:~~

36 ~~(a) avoidance of impropriety and appearance of impropriety;~~

37 ~~(b) freedom from personal bias;~~

38 ~~(c) ability to decide issues based on the law and the facts without regard to the identity of the~~  
39 ~~parties or counsel, the popularity of the decision, and without concern for or fear of criticism;~~

40 ~~(d) impartiality of actions; and~~

41 ~~(e) compliance with the Code of Judicial Conduct.~~

42 ~~(ii) Knowledge and understanding of the law and judicial branch rules — Factors considered~~  
43 ~~may include but are not limited to:~~

44 ~~(a) the issuance of legally sound decisions;~~

45 ~~(b) understanding of the substantive, procedural, and evidentiary law of the state;~~

1 (c) attentiveness to the factual and legal issues before the court; and  
2 (d) the proper application of judicial precedents and other appropriate sources of authority.  
3 (iii) Ability to communicate— Factors considered may include but are not limited to:  
4 (a) clarity of bench rulings and other oral communications;  
5 (b) quality of written opinions with specific focus on clarity and logic, and the ability to  
6 explain clearly the facts of a case and the legal precedents at issue; and  
7 (c) sensitivity to impact of demeanor and other nonverbal communications.  
8 (iv) Preparation, attentiveness, dignity and control over proceedings— Factors considered  
9 may include but are not limited to:  
10 (a) courtesy to all parties and participants; and  
11 (b) willingness to permit every person legally interested in a proceeding to be heard, unless  
12 precluded by law or rules of courts.  
13 (v) Skills as a manager— Factors considered may include but are not limited to:  
14 (a) devoting appropriate time to all pending matters;  
15 (b) discharging administrative responsibilities diligently; and  
16 (c) where responsibility exists for a calendar, knowledge of the number, age, and status of  
17 pending cases.  
18 (vi) Punctuality— Factors considered may include but are not limited to:  
19 (a) the prompt disposition of pending matters;  
20 (b) meeting commitments on time and according to rules of the court; and  
21 (c) compliance with the case processing time standard established by the Council.  
22 (vii) Service to the profession and the public— Factors considered may include but are not  
23 limited to:  
24 (a) attendance at and participation in judicial and continuing legal education programs;  
25 (b) consistent with the Code of Judicial Conduct, participation in organizations which are  
26 devoted to improving the justice system;  
27 (c) consistent with the highest principles of the law, ensuring that the court is serving the  
28 public and the justice system to the best of its ability and in such a manner as to instill  
29 confidence in the court system; and  
30 (d) service within the organizations of the judicial branch of government and in leadership  
31 positions within the judicial branch of government, such as presiding judge, Judicial Council,  
32 Boards of Judges, and standing and ad hoc committees.  
33 (viii) Effectiveness in working with other judges, commissioners and court personnel—  
34 Factors considered may include but are not limited to:  
35 (a) when part of a multi judge panel, exchanging ideas and opinions with other judges during  
36 the decision making process;  
37 (b) critiquing the work of colleagues;  
38 (c) facilitating the performance of administrative responsibilities of other judges and  
39 commissioners; and  
40 (d) effectively working with court staff.  
41 (5) Self improvement evaluation process.  
42 (A) The evaluation process shall be composed of acceptable professionally recognized  
43 methods of data collection which may include surveys, onsite visits, caseload management data  
44 analysis and personal interviews. Self improvement evaluations shall be obtained from multiple  
45 sources to provide balanced information on an individual judge or commissioner.

1       ~~(B) Data collection for self-improvement evaluations shall be conducted as follows:~~  
2       ~~(i) Data collection instruments shall be developed to permit measurement by individual court~~  
3 ~~levels.~~  
4       ~~(ii) Data collection instruments will identify information which is to be used solely for~~  
5 ~~self-improvement.~~  
6       ~~(C) The self-improvement performance evaluations shall provide individual judges and~~  
7 ~~commissioners with evaluation results every two years during their terms of office. Newly~~  
8 ~~appointed judges or commissioners shall be evaluated once after their first year in office and~~  
9 ~~again prior to their initial retention election or reappointment.~~  
10       ~~(D) Information collected from individuals concerning the self-improvement evaluation shall~~  
11 ~~be based on knowledge of the judge's performance during the current term of office or the~~  
12 ~~commissioner's most recent 2 years of performance. Objective data collected shall be based on~~  
13 ~~the judge's current term of office or the commissioner's most recent 2 years of performance.~~  
14       ~~(E) Provisions for confidentiality shall be established such that performance data on~~  
15 ~~individual judges and commissioners and the source of information cannot be identified except~~  
16 ~~as needed to comply with this rule.~~  
17       ~~(F) Dissemination and uses of self-improvement evaluation.~~  
18       ~~(i) Dissemination of results and data from the Program shall be consistent with and conform~~  
19 ~~to the goal of self-improvement of the individual judge, commissioner and the judiciary as a~~  
20 ~~whole.~~  
21       ~~(ii) Data collected for self-improvement and improvement of the judiciary shall be tabulated~~  
22 ~~by question in the case of survey and by source and type where other methodologies are~~  
23 ~~employed. The data shall be disseminated as follows:~~  
24       ~~(a) Individual data and results shall be provided only to the judge or commissioner evaluated,~~  
25 ~~together with the averages for each judge's or commissioner's geographic region.~~  
26       ~~(b) Summary data and results, without individual identification, shall be provided to the~~  
27 ~~Council and Boards of Judges by court level and within geographic region.~~  
28       ~~(c) Under no circumstances shall the data collected or the results of the evaluation be used to~~  
29 ~~discipline a judge or commissioner or be disseminated to authorities charged with disciplinary~~  
30 ~~responsibility or responsibility for determining certification for reelection, reappointment or~~  
31 ~~continued service.~~  
32       ~~(iii) Geographic regions are:~~  
33       ~~(a) Region 1: Judicial Districts 1, 5, 6, 7, and 8;~~  
34       ~~(b) Region 2: Judicial District 2;~~  
35       ~~(c) Region 3: Judicial District 3; and~~  
36       ~~(d) Region 4: Judicial District 4.~~  
37       ~~Rule 3-111. Performance evaluation for certification of judges and commissioners.~~  
38       ~~Intent:~~  
39       ~~To establish a performance evaluation program to be used for the certification of judges and~~  
40 ~~commissioners pursuant to Utah Code Ann. ' 78-3-21(4).~~  
41       ~~To establish the guidelines which shall be used by the Council in certifying judges for~~  
42 ~~retention election or reappointment.~~  
43       ~~To establish guidelines which shall be used by the Council and presiding judges in retaining~~  
44 ~~a court commissioner for continued service.~~

1 To provide meaningful and relevant information to the public and applicable appointing  
2 authority to guide its decision on whether to retain or reappoint judges or commissioners without  
3 compromising the self improvement goal of the Judicial Performance Evaluation Program or the  
4 independence of the judiciary.

5 ~~Applicability:~~

6 This rule shall apply to all judges standing for retention election after November 1990,  
7 municipal justice court judges seeking reappointment and court commissioners, except that  
8 Paragraph (3)(A) shall apply only to the judges and commissioners of the courts of record and  
9 Paragraph (3)(B) shall apply only to the judges of the district court who conduct jury trials.

10 Paragraphs with more limited applicability shall apply as specified in the paragraph.

11 ~~Statement of the Rule:~~

12 ~~(1) Objective.~~

13 (A) Each judge standing for retention election, or other judge or commissioner standing for  
14 reappointment or continued service, shall be evaluated for compliance with the standards set  
15 forth in this rule for each criterion as defined in this rule.

16 (B) A judge or commissioner is entitled to certification upon compliance with the standards  
17 for each criterion set forth in this rule. Any judge or commissioner who fails to satisfy any of the  
18 standards for a criterion set forth in this rule is deemed not entitled to certification. Any judge or  
19 commissioner deemed not entitled to certification may request a hearing before the Council. The  
20 Council may, after hearing if requested, within its sole discretion, grant certification based on  
21 written findings that it is in the best interests of the administration of justice.

22 (C) No evaluation shall be based upon a criterion which has not been adopted and in effect  
23 for at least two years. However, the methodology for measurement may change from year to  
24 year.

25 ~~(2) Criteria of performance. The following criteria shall be used to evaluate a judge or~~  
26 ~~commissioner:~~

27 (A) Integrity—Factors considered shall include but are not limited to:

28 (i) avoidance of impropriety and appearance of impropriety;

29 (ii) freedom from personal bias;

30 (iii) ability to decide issues based on the law and the facts without regard to the identity of  
31 the parties or counsel, the popularity of the decision, and without concern for or fear of criticism;

32 (iv) impartiality of actions; and

33 (v) compliance with the Code of Judicial Conduct.

34 (B) Knowledge and understanding of the law and judicial branch rules—Factors considered  
35 shall include but are not limited to:

36 (i) the issuance of legally sound decisions;

37 (ii) understanding of the substantive, procedural, and evidentiary law of the state;

38 (iii) attentiveness to the factual and legal issues before the court; and

39 (iv) the proper application of judicial precedents and other appropriate sources of authority.

40 (C) Ability to communicate—Factors considered shall include but are not limited to:

41 (i) clarity of bench rulings and other oral communications;

42 (ii) quality of written opinions with specific focus on clarity and logic, and the ability to  
43 explain clearly the facts of a case and the legal precedents at issue; and

44 (iii) sensitivity to impact of demeanor and other nonverbal communications.

1       ~~(D) Preparation, attentiveness, dignity and control over proceedings—Factors considered~~  
2 ~~shall include but are not limited to:~~

3       ~~(i) courtesy to all parties and participants; and~~

4       ~~(ii) willingness to permit every person legally interested in a proceeding to be heard, unless~~  
5 ~~precluded by law or rules of courts.~~

6       ~~(E) Skills as a manager—Factors considered shall include but are not limited to:~~

7       ~~(i) devoting appropriate time to all pending matters;~~

8       ~~(ii) discharging administrative responsibilities diligently; and~~

9       ~~(iii) where responsibility exists for a calendar, knowledge of the number, age, and status of~~  
10 ~~pending cases.~~

11       ~~(F) Punctuality—Factors considered shall include but are not limited to:~~

12       ~~(i) the prompt disposition of pending matters; and~~

13       ~~(ii) meeting commitments on time and according to rules of the court.~~

14       ~~(3) Standards of performance. The following standards of performance must be met to entitle~~  
15 ~~a judge or commissioner to certification.~~

16       ~~(A) Survey of attorneys. The Council shall measure satisfactory performance of each judge~~  
17 ~~and commissioner of the courts of record by a sample survey of the attorneys appearing before~~  
18 ~~the judge or commissioner during the preceding two years or such shorter period for which the~~  
19 ~~judge or commissioner is being evaluated. The Standing Committee on Judicial Performance~~  
20 ~~Evaluation shall submit a proposed survey and any proposed amendments to the Council for~~  
21 ~~approval.~~

22       ~~(i) Survey subject matter. Subjects inquired into by the survey shall be drawn from but need~~  
23 ~~not include all of the criteria referenced in paragraph (2) of this rule.~~

24       ~~(ii) Survey questions. All questions will be used for certification purposes and for self~~  
25 ~~improvement purposes. The survey shall include a general retention question, which is part of the~~  
26 ~~certification section, as follows: ¶Taking everything into account, would you recommend the~~  
27 ~~Judicial Council certify this judge or commissioner for retention?@~~

28       ~~(iii) Survey scoring. The survey shall be scored as follows:~~

29       ~~(a) Each question, except the general retention question, of the attorney survey will have six~~  
30 ~~possible responses: Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate,~~  
31 ~~or No Personal Knowledge. A favorable response is Excellent, More Than Adequate or~~  
32 ~~Adequate.~~

33       ~~(b) Each question shall be scored by dividing the total number of favorable responses by the~~  
34 ~~total number of all responses, excluding the ¶No Personal Knowledge@responses.~~

35       ~~(c) The general retention question shall not be used in the calculation of survey scoring. In~~  
36 ~~the event that a judge or commissioner is not certified and requests a hearing, response to the~~  
37 ~~general retention question may be utilized by the judge, commissioner, or Council as a mitigating~~  
38 ~~or aggravating factor.~~

39       ~~(d) A satisfactory score is achieved for each question when the favorable responses computed~~  
40 ~~in (b) above is 70% or greater.~~

41       ~~(e) A judge's or commissioner's performance is satisfactory if:~~

42       ~~(1) At least 75% of the questions, except the general retention question, have a satisfactory~~  
43 ~~score as stated in (d) above; and~~



1       ~~(2) The favorable responses (except the general retention question) when divided by the total~~  
2 ~~number of all responses to the certification questions (excluding ANo Personal Knowledge@~~  
3 ~~responses and general retention responses) is 70% or greater.~~

4       ~~(iv) Surveyor. As used in this rule, the term ASurveyor@ means the organization or individual~~  
5 ~~awarded a contract through procedures established by the state procurement code to survey~~  
6 ~~lawyers regarding the performance of judges.~~

7       ~~(v) Survey respondents. The clerk for the judge or commissioner shall identify as potential~~  
8 ~~respondents all lawyers who have appeared before the judge or commissioner at a hearing or trial~~  
9 ~~during the preceding two year period or such shorter period for which the judge or commissioner~~  
10 ~~is being evaluated. The judge or commissioner shall not review the list of potential respondents.~~  
11 ~~A lawyer who has been appointed as a judge or commissioner shall not be a respondent in the~~  
12 ~~survey.~~

13       ~~(vi) Exclusion from survey respondents. By certifying that one or more of the following~~  
14 ~~conditions applies, the judge or commissioner may exclude an attorney from the list of~~  
15 ~~respondents: The judge or commissioner~~

16       ~~(a) has referred the lawyer to the Utah State Bar for discipline,~~

17       ~~(b) has found the lawyer in contempt of court,~~

18       ~~(c) has sanctioned the lawyer pursuant to rules of procedure,~~

19       ~~(d) has presided in a civil or criminal proceeding to which the lawyer is a party, or~~

20       ~~(e) has been the subject of an affidavit of bias or prejudice under Utah Rule of Civil~~  
21 ~~Procedure 63 or Utah Rule of Criminal Procedure 29 filed by the attorney~~

22       ~~(vii) If a judge holds a law firm jointly responsible under Utah Rule of Civil Procedure~~  
23 ~~11(c)(1)(A), the judge may exclude all members of the law firm from the list of respondents.~~

24       ~~(viii) Number of survey respondents. For each justice, judge, or commissioner who is the~~  
25 ~~subject of a survey, the Surveyor shall identify 180 respondents or all attorneys appearing before~~  
26 ~~the judge or commissioner whichever is less.~~

27       ~~(ix) Factors in selecting respondents; response rate. In selecting respondents from potential~~  
28 ~~respondents, the Surveyor should favor attorneys with a greater number of appearances and~~  
29 ~~attorneys with more recent appearances, and the Surveyor should attempt to limit the number of~~  
30 ~~survey questionnaires to which an attorney is asked to respond to 12. The Surveyor may balance~~  
31 ~~these factors in assigning respondents to particular judges or commissioners. The Surveyor~~  
32 ~~should pursue a response rate of 70% or more for each judge or commissioner. The goals of this~~  
33 ~~subparagraph are advisory only and failure to meet the goals shall not invalidate the survey.~~

34       ~~(x) Administration of the survey. Judges with a six year term of office shall be the subject of~~  
35 ~~a survey in September of the third and fifth year of the term. Justices of the Supreme Court shall~~  
36 ~~be the subject of a survey in September of the third, seventh and ninth years of the term. Newly~~  
37 ~~appointed judges shall be the subject of a survey during their second year in office and, at their~~  
38 ~~option, prior to their initial retention election. Court Commissioners shall be the subject of a~~  
39 ~~survey approximately one year and three years prior to the expiration of their term of~~  
40 ~~appointment.~~

41       ~~(B) Survey of jurors. The Council shall measure satisfactory performance of each judge by a~~  
42 ~~survey of the jurors appearing before the judge during the preceding two years or such shorter~~  
43 ~~period for which the judge is being evaluated. A survey of jurors for all district court judges who~~  
44 ~~preside over jury trials shall be conducted during the four years prior to certification for retention~~  
45 ~~election. However, a survey of jurors for district court judges serving prior to their initial~~

1 retention election shall be conducted during the two years prior to certification for retention  
2 election. The results of surveys administered during the final two years prior to certification shall  
3 be used for certification. The results of surveys administered during the third and fourth years  
4 prior to certification shall be used for self improvement and not for certification.

5 (i) Survey subject matter. Subjects inquired into by the survey shall be drawn from but need  
6 not include all of the criteria in paragraph (2) of this rule. The Standing Committee on Judicial  
7 Performance Evaluation shall submit a proposed survey and any proposed amendments to the  
8 Council for approval. The survey shall include a general question as follows: ~~AWould you be~~  
9 comfortable having your case tried before this judge?~~@~~ Each question, except the general  
10 question, will have four possible responses: Yes, No, No Opinion, and No Opportunity to  
11 Observe. The general question shall have two responses: Yes and No. A note card on which the  
12 juror can provide anonymous comments to the judge shall be attached to the survey  
13 questionnaire.

14 (ii) Survey scoring. The survey shall be scored as follows:

15 (a) A favorable response is Yes.

16 (b) Each question shall be scored by dividing the total number of Yes responses by the total  
17 number of Yes plus No responses.

18 (c) The general question shall not be used in the calculation of survey scoring. In the event a  
19 judge is not certified and requests a hearing, response to the general question may be used as a  
20 mitigating or aggravating factor.

21 (d) A satisfactory score is achieved for each question when the ratio of favorable responses  
22 computed in (b) above is 70% or greater.

23 (e) A judge's performance is satisfactory if:

24 (1) At least 75% of the questions on the survey, except the general question, have a  
25 satisfactory score as stated in (d) above; and

26 (2) The Yes responses to all questions except the general question, when divided by the total  
27 number of Yes plus No responses to all questions except the general question, is 70% or greater.

28 (iii) Administration of the survey. All jurors rendering a verdict in a case and all jurors,  
29 including alternate jurors, with at least three hours of trial time with the judge shall have the  
30 opportunity to be a respondent to the survey questionnaire.

31 (a) For jurors rendering a verdict. As soon as possible after the jury has been discharged, the  
32 bailiff or clerk in charge of the jury shall reassemble the jurors and provide them with the  
33 evaluation questionnaires and comment note cards and two envelopes. One envelope will be  
34 preprinted with the mailing address of the survey consultant; the other will be preprinted with the  
35 name of the judge. The forms will instruct the jurors to place the comment note cards in the  
36 envelope with the judge's name, to place the survey questionnaires, completed and uncompleted,  
37 in the envelope with the consultant's name, and to seal the envelopes. The bailiff or clerk shall  
38 deliver the sealed envelopes to the respective addressees.

39 (b) For jurors not rendering a verdict. If a juror or alternate juror is discharged prior to  
40 rendering a verdict but after at least three hours of trial time with the judge, the bailiff or clerk in  
41 charge of the jury shall administer the questionnaire to the discharged juror in the same manner  
42 as in paragraph (a) above.

43 (C) Case under advisement standard. A case is considered to be under advisement when the  
44 entire case or any issue in the case has been submitted to the judge or commissioner for final

determination. The Council shall measure satisfactory performance during the prior two years by the self declaration of the judge or commissioner or by review of the records of the court.

(i) A justice of the Supreme Court whose term of office expires in 1998 or thereafter demonstrates satisfactory performance by circulating not more than six principal opinions more than six months after submission.

(ii) A judge of the Court of Appeals whose term of office expires in 1998 or thereafter demonstrates satisfactory performance by:

(a) circulating not more than six principal opinions more than six months after submission; and

(b) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(iii) A trial court judge or commissioner demonstrates satisfactory performance by holding:

(a) 6 or fewer cases under advisement beyond two months after submission; and

(b) no case under advisement beyond six months after submission.

(D) Compliance with education standards. Satisfactory performance is established if the minimum education requirements established by this Code have been met subject to the availability of in state education programs. The Council shall measure satisfactory performance during the prior two years by the self declaration of the judge or commissioner or by review of records of the state court administrator.

(E) Substantial compliance with Code of Judicial Conduct and the Code of Judicial Administration. Satisfactory performance is established if the response of the judge or commissioner demonstrates substantial compliance with the Code of Judicial Conduct and the Code of Judicial Administration and if the Council finds the responsive information to be complete and correct.

(F) Physical and mental competence. Satisfactory performance is established if the response of the judge or commissioner demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(4) Judicial Council action.

(A) The Council shall meet in a regularly scheduled meeting not later than February 15 of each even numbered year to determine if each judge or commissioner meets the standards of performance for each criterion as defined in this rule. The meeting shall be conducted in executive session called in compliance with the Utah Open and Public Meetings Act.

(B) The Council may determine that a judge subject to retention election after the abbreviated initial term of office is entitled to certification based upon the attorney survey conducted after the first 12 months in office and the other requirements of certification. The Council may determine that a judge subject to retention election after the abbreviated initial term of office is not entitled to certification based upon the second attorney survey conducted during the initial term of office.

(C) The Council shall certify each judge standing for retention election or reappointment and each commissioner who is entitled to certification under this rule. Written notice of the decision shall be provided to each judge or commissioner within 10 days after the Council's decision.

(D) Any judge or commissioner deemed not entitled to certification under this rule shall be notified of that decision within 10 days by the Council. Such judge or commissioner may request a hearing before the Council by filing a written request within 10 days after receiving notice of

1 the Council's decision. The hearing shall be held within 20 days after receipt of the written  
2 request and such hearing shall be held in executive session.

3 (i) The judge or commissioner may provide explanation, information in mitigation or  
4 information to correct data previously provided to the Council. Information presented shall be  
5 directly responsive to the identified deficiency.

6 (ii) The Council may consider any other relevant information it deems appropriate in its sole  
7 discretion, including but not limited to factors in aggravation or mitigation, past performance  
8 evaluations, public and private sanctions entered by the Judicial Conduct Commission against  
9 the judge or by the Commissioner Conduct Committee against the court commissioner, and other  
10 testimony.

11 (iii) In evaluating failure to comply with a standard, the Council shall consider workload,  
12 absence from the bench, inadequacy of administrative support or other extenuating  
13 circumstances identified by the judge which may have prohibited compliance.

14 (iv) The Council shall notify the judge or commissioner of the Council's decision in writing  
15 within 10 days after the hearing.

16 (v) If a judge or commissioner not entitled to certification fails to request such a hearing  
17 within the time allowed, the Council shall memorialize at its next regularly scheduled meeting  
18 that such judge or commissioner is not certified.

19 (E) The Council shall provide the information required by Section 20A 7 702 to the Office of  
20 Lieutenant Governor for publication in the voter information pamphlet.

21 (F) For each municipal justice court judge subject to reappointment, the Council shall  
22 provide the information described in ' 20A 7 702 to the appointing authority by August 1 of the  
23 year prior to the expiration of the judge's term of office.

24 (G) The Council shall notify each presiding judge of the certification decision on every  
25 commissioner by June 1 of each even numbered year. Upon entry of a final decision not to  
26 certify a commissioner, the Council shall remove the commissioner from office. The surveyor  
27 shall provide to the presiding judge the report of the survey results for all commissioners of that  
28 court.

29 (5) Administration of the judicial performance evaluation program.

30 (A) The Standing Committee on Judicial Performance Evaluation shall:

31 (i) Provide to the Council a proposed schedule of activities and recommended procedures by  
32 which to administer the evaluation for certification by May 1 of each odd numbered year.

33 (ii) With the Council's approval, mail a schedule and list of procedures to all judges and  
34 commissioners subject to evaluation.

35 (iii) Include in its annual report to the Council recommendations for the improvement of the  
36 certification evaluation program.

37 (B) If a judge between March 1 and July 1 of the year prior to the judge's retention election  
38 or a commissioner at any time states in writing to the Judicial Council his or her intent not to  
39 continue in office beyond the close of the calendar year in which the judge or commissioner is  
40 scheduled for retention election or reappointment, the Judicial Council shall not include the  
41 judge or commissioner within the list of judges and commissioners who are the subject of the  
42 next attorney survey. If the judge or commissioner remains in office contrary to his or her written  
43 commitment not to remain in office, the Council shall determine that the judge or commissioner  
44 is not entitled to certification for retention election or reappointment.

1       (C) ~~Unless otherwise stated, evaluation and certification of judges and commissioners shall~~  
2 ~~be based upon performance during the current term of office.~~

3       (D) ~~Provisions for confidentiality shall be established such that performance data on~~  
4 ~~individual judges or commissioners and the source of particular information cannot be identified~~  
5 ~~except as required to comply with this rule.~~

6       (E) ~~Data submitted to the Council for certification shall be tabulated by survey question or~~  
7 ~~type of information by judge or commissioner, by court level and by geographic region.~~

8       (i) ~~Data under this section shall be made available to the Council prior to its January meeting~~  
9 ~~of each even numbered year.~~

10       (ii) ~~Individual judges and commissioners shall receive their individual results a minimum of~~  
11 ~~20 days prior to submission to the Council. Judges and commissioners must provide comments~~  
12 ~~on the results to the Council at least 5 working days prior to Council consideration.~~

13       (iii) ~~Data collected by survey for certification purposes shall be reported in 1% increments.~~  
14 ~~However, if the sample size for the survey for a particular judge is too small to provide~~  
15 ~~statistically reliable information in 1% increments, the survey results for that judge shall be~~  
16 ~~reported as satisfactory or unsatisfactory performance as defined in this rule with a statement by~~  
17 ~~the surveyor explaining why the survey is statistically unreliable.~~

18       (iv) ~~The Council and individual judges or commissioners shall be provided with summary~~  
19 ~~data and results without individual identification for each survey question or type of information~~  
20 ~~for each court level and each geographic region.~~

21       (v) ~~The Council shall make information collected under this section on judges and court~~  
22 ~~commissioners standing for retention election or reappointment available to the public prior to~~  
23 ~~retention election or reappointment in the same form which was used by the Council to make its~~  
24 ~~certification decision. Information on individual judges and commissioners not used for~~  
25 ~~certification by the Council shall not be available to the public. Summary data compiled by court~~  
26 ~~level or geographic region without identification of individual judges or commissioners may be~~  
27 ~~made available to the public upon request.~~

28       (vi) ~~Geographic regions are:~~

29       (a) ~~Region 1: Judicial Districts 1, 5, 6, 7, and 8;~~

30       (b) ~~Region 2: Judicial District 2;~~

31       (c) ~~Region 3: Judicial District 3; and~~

32       (d) ~~Region 4: Judicial District 4.~~

33       Rule 3-111.01. Goals of performance evaluation for certification for retention election.

34       Intent:

35       To specify the goals of evaluating judges for certification for retention election.

36       Applicability:

37       This rule shall apply to the Judicial Council and to the judges and commissioners of the  
38 courts of record and courts not of record.

39       Statement of the Rule:

40       The goals of the judicial performance evaluation program are to:

41       (1) establish the criteria upon which judges will be evaluated, the standards against which  
42 judicial performance will be measured and the methods for fairly, accurately and reliably  
43 measuring judicial performance;

44       (2) generate and to provide to judges and commissioners information about their  
45 performance;

1       (3) establish the procedures by which the Council will evaluate and certify judges for  
2 retention election or reappointment;

3       (4) establish the procedures by which the Council will evaluate and certify commissioners for  
4 reappointment;

5       (5) provide meaningful and relevant information to the public or applicable appointing  
6 authority to assist in the decision to retain or reappoint judges and commissioners; and

7       (6) protect the independence of judges and commissioners in their obligations under federal  
8 and state constitutions, federal and state statutes and court rules.

9       Rule 3-111.02. Judicial performance evaluation criteria.

10       Intent:

11       To specify the criteria upon which judges will be evaluated and certified.

12       Applicability:

13       This rule shall apply to the Judicial Council and to the judges and commissioners of the  
14 courts of record and courts not of record.

15       Statement of the Rule:

16       Judges and commissioners shall be evaluated and certified upon the following criteria.

17       (1) Integrity - Factors considered may include but are not limited to:

18       (A) avoidance of impropriety and appearance of impropriety;

19       (B) freedom from personal bias;

20       (C) ability to decide issues based on the law and the facts without regard to the identity of the  
21 parties or counsel, the popularity of the decision or concern for criticism;

22       (D) impartiality of actions; and

23       (E) compliance with the Code of Judicial Conduct.

24       (2) Knowledge and understanding of the law and procedures - Factors considered may  
25 include but are not limited to:

26       (A) the issuance of legally sound decisions;

27       (B) understanding of the substantive, procedural, and evidentiary law of the state;

28       (C) attentiveness to the factual and legal issues before the court; and

29       (D) the proper application of judicial precedents and other appropriate sources of authority.

30       (3) Ability to communicate - Factors considered may include but are not limited to:

31       (A) clarity of bench rulings and other oral communications;

32       (B) quality of written opinions with specific focus on clarity and logic, and the ability to  
33 explain clearly the facts of a case and the legal precedents at issue; and

34       (C) sensitivity to impact of demeanor and other nonverbal communications.

35       (4) Preparation, attentiveness, dignity and control over proceedings - Factors considered may  
36 include but are not limited to:

37       (A) courtesy to all parties and participants; and

38       (B) willingness to permit every person legally interested in a proceeding to be heard, unless  
39 precluded by law.

40       (5) Skills as a manager - Factors considered may include but are not limited to:

41       (A) devoting appropriate time to all pending matters;

42       (B) discharging administrative responsibilities diligently; and

43       (C) where responsibility exists for a calendar, knowledge of the number, age, and status of  
44 pending cases.

45       (6) Punctuality - Factors considered may include but are not limited to:

1 (A) the prompt disposition of pending matters;  
2 (B) meeting commitments on time and according to rules of the court; and  
3 (C) compliance with the case processing time standard established by the Council.  
4 (7) Service to the profession and the public - Factors considered may include but are not  
5 limited to:  
6 (A) attendance at and participation in judicial and continuing legal education programs;  
7 (B) consistent with the Code of Judicial Conduct, participation in organizations devoted to  
8 improving the justice system;  
9 (C) consistent with the highest principles of the law, ensuring that the court is serving the  
10 public and the justice system to the best of its ability and in such a manner as to instill  
11 confidence in the court system; and  
12 (D) service within the organizations of the judicial branch of government and in leadership  
13 positions within the judicial branch of government, such as presiding judge, Judicial Council,  
14 Boards of Judges, and standing and ad hoc committees.  
15 (8) Effectiveness in working with other judges, commissioners and court personnel - Factors  
16 considered may include but are not limited to:  
17 (A) when part of a multi-judge panel, exchanging ideas and opinions with other judges  
18 during the decision-making process;  
19 (B) critiquing the work of colleagues;  
20 (C) facilitating the administrative responsibilities of other judges and commissioners; and  
21 (D) effectively working with court staff.  
22 Rule 3-111.03. Standards of judicial performance.  
23 Intent:  
24 To specify the standards against which judicial performance will be measured and the  
25 methods for fairly, accurately and reliably measuring judicial performance.  
26 Applicability:  
27 This rule shall apply to the Judicial Council and, except as otherwise provided, to the judges  
28 and commissioners of the courts of record and not of record.  
29 Subsection (2)(A) shall apply to the judges and commissioners of the courts of record.  
30 Subsection (2)(B) shall apply to the judges of the district court who conduct jury trials.  
31 For judges standing for retention election in 2004 and beyond and for commissioners subject  
32 to reappointment in 2003 and beyond, Subsection (2)(C) shall apply from the effective date of  
33 the rule until the evaluation by the Council or for the judge's or commissioner's term of office,  
34 whichever is shorter. Judges standing for retention election in 2002 and commissioners subject to  
35 reappointment in 2002 shall meet the case under advisement standard as it existed prior to the  
36 effective date of this rule. (Former Rule 3-111(3)(C).)  
37 Statement of the Rule:  
38 (1)(A) A judge standing for retention election or reappointment, or commissioner standing  
39 for reappointment, shall be evaluated for compliance with the standards set forth in this rule.  
40 (B) No evaluation shall be based upon a criterion or standard in effect for less than two years.  
41 However, the methodology for measurement may change periodically. Evaluation shall be based  
42 upon performance during the current term of office.  
43 (2) Standards of performance.  
44 (A) Survey of attorneys.

1       (i) The Council shall measure satisfactory performance by a sample survey of the attorneys  
2       appearing before the judge or commissioner during the preceding two years or such shorter  
3       period for which the judge or commissioner is being evaluated. The Council shall measure  
4       satisfactory performance based on the results of the final survey conducted during a judge's or  
5       commissioner's term of office, subject to the discretion of a judge serving an abbreviated initial  
6       term not to participate in a second survey under Section (2)(A)(viii) of this rule.

7       (ii) Survey scoring. The survey shall be scored as follows.

8       (a) Each question of the attorney survey will have six possible responses: Excellent, More  
9       Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A  
10      favorable response is Excellent, More Than Adequate or Adequate.

11      (b) Each question shall be scored by dividing the total number of favorable responses by the  
12      total number of all responses, excluding the "No Personal Knowledge" responses. A satisfactory  
13      score for a question is achieved when the ratio of favorable responses is 70% or greater.

14      (c) A judge's or commissioner's performance is satisfactory if:

15      (1) at least 75% of the questions have a satisfactory score; and

16      (2) the favorable responses when divided by the total number of all responses, excluding "No  
17      Personal Knowledge" responses, is 70% or greater.

18      (iii) Surveyor. As used in this Code, the term "Surveyor" means the organization or  
19      individual awarded a contract through procedures established by the state procurement code to  
20      survey respondents regarding the performance of judges.

21      (iv) Survey respondents. The clerk for the judge or commissioner or the Administrative  
22      Office of the Courts shall identify as potential respondents all lawyers who have appeared before  
23      the judge or commissioner at a hearing or trial during the preceding two year period or such  
24      shorter period for which the judge or commissioner is being evaluated. The judge or  
25      commissioner shall not review the list of potential respondents.

26      (v) Exclusion from survey respondents.

27      (a) A lawyer who has been appointed as a judge or commissioner shall not be a respondent in  
28      the survey.

29      (b) By certifying that one or more of the following conditions applies, the judge or  
30      commissioner may exclude an attorney from the list of respondents: The judge or commissioner

31      (1) has referred the lawyer to the Utah State Bar for discipline,

32      (2) has found the lawyer in contempt of court,

33      (3) has sanctioned the lawyer pursuant to rules of procedure,

34      (4) has held the lawyer's law firm jointly responsible under Utah Rule of Civil Procedure  
35      11(c)(1)(A),

36      (5) has presided in a civil or criminal proceeding to which the lawyer is a party, or

37      (6) has been the subject of an affidavit of bias or prejudice under Utah Rule of Civil  
38      Procedure 63 or Utah Rule of Criminal Procedure 29 filed by the attorney in which the attorney  
39      alleges animus of the judge or commissioner toward the attorney.

40      (c) Other exclusions.

41      (1) A judge may request that the Judicial Council exclude from the survey an attorney who  
42      does not qualify for exclusion under (b) if the judge believes the attorney will not respond  
43      objectively to the survey. The request must be submitted within 14 days after receiving the form  
44      for excluding lawyers under (b).



1       (2) In the request, the judge shall explain why the attorney will not respond objectively to the  
2 survey. The judge shall explain why the attorney's behavior has not subjected the attorney to  
3 sanction under the rules of procedure, contempt or referral to the Bar.

4       (3) If the Management Committee determines that the attorney will not respond objectively  
5 to the survey, the Management Committee shall inform the Judicial Council for ratification. If  
6 the Judicial Council ratifies the determination, the Administrative Office of the Courts shall  
7 notify the Surveyor and the Surveyor shall exclude the attorney from the judge's respondent  
8 pool. The determination applies only to the pending attorney survey.

9       (vi) Number of survey respondents. For each judge or commissioner who is the subject of a  
10 survey, the Surveyor shall identify 180 respondents or all attorneys appearing before the judge or  
11 commissioner whichever is less.

12       (vii) Factors in selecting respondents; response rate. In selecting respondents from potential  
13 respondents, the Surveyor should favor attorneys with a greater number of appearances and  
14 attorneys with more recent appearances, and the Surveyor should limit to 12 the number of  
15 survey questionnaires to which an attorney is asked to respond. The Surveyor may balance these  
16 factors in assigning respondents to particular judges or commissioners. The Surveyor should  
17 pursue a response rate of 70% or more for each judge or commissioner. The goals of this  
18 paragraph are advisory and failure to meet the goals shall not invalidate the survey.

19       (viii) Administration of the survey. Judges with a six-year term of office shall be the subject  
20 of a survey in the fifth year of the term. Justices of the Supreme Court shall be the subject of a  
21 survey in the ninth year of the term. Newly appointed judges shall be the subject of a survey  
22 during their second year in office and, at their option, prior to their initial retention election.  
23 Court Commissioners shall be the subject of a survey approximately one year prior to the  
24 expiration of their term of appointment.

25       (B) Survey of jurors. The Council shall measure satisfactory performance by a survey of the  
26 jurors appearing before the judge during the preceding two years or such shorter period for  
27 which the judge is being evaluated.

28       (i) Survey responses. Each question will have four possible responses: Yes, No, No Opinion,  
29 and No Opportunity to Observe. A note card on which the juror can provide anonymous  
30 comments to the judge shall be attached to the survey questionnaire.

31       (ii) Survey scoring. The survey shall be scored as follows:

32       (a) A favorable response is Yes.

33       (b) Each question shall be scored by dividing the total number of Yes responses by the total  
34 number of Yes plus No responses.

35       (c) A satisfactory score for a question is achieved when the ratio of favorable responses is  
36 70% or greater.

37       (d) A judge's performance is satisfactory if:

38       (1) At least 75% of the questions on the survey have a satisfactory score; and

39       (2) The Yes responses to all questions when divided by the total number of Yes plus No  
40 responses to all questions is 70% or greater.

41       (iii) Administration of the survey. All jurors rendering a verdict in a case and all jurors,  
42 including alternate jurors, with at least three hours of trial time with the judge shall have the  
43 opportunity to respond to the survey questionnaire.

44       (a) For jurors rendering a verdict. While the jurors are waiting for court to convene after  
45 declaring that they have reached a verdict, or as soon as possible after the jury has been

1 discharged, the bailiff or clerk in charge of the jury shall provide the jurors with the evaluation  
2 questionnaires and comment note cards and two envelopes. One envelope will be preprinted with  
3 the mailing address of the Surveyor; the other will be preprinted with the name of the judge. The  
4 forms will instruct the jurors to place the comment note cards in the envelope with the judge-s  
5 name, to place the survey questionnaires, completed and uncompleted, in the envelope with the  
6 Surveyor's name, and to seal the envelopes. The bailiff or clerk shall deliver the sealed  
7 envelopes to the respective addressees.

8 (b) For jurors not rendering a verdict. If a juror or alternate juror is discharged prior to  
9 rendering a verdict but after at least three hours of trial time with the judge, the bailiff or clerk in  
10 charge of the jury shall administer the questionnaire to the discharged juror in the same manner  
11 as in paragraph (a) above.

12 (C) Case under advisement standard. A case is considered to be under advisement when the  
13 entire case or any issue in the case has been submitted to the judge or commissioner for final  
14 determination. The Council shall measure satisfactory performance by the self declaration of the  
15 judge or commissioner or by reviewing the records of the court.

16 (i) A justice of the Supreme Court demonstrates satisfactory performance by circulating not  
17 more than an average of three principal opinions per calendar year more than six months after  
18 submission with no more than half of the maximum exceptional cases in any one calendar year.

19 (ii) A judge of the Court of Appeals demonstrates satisfactory performance by:

20 (a) circulating not more than an average of three principal opinions per calendar year more  
21 than six months after submission with no more than half of the maximum exceptional cases in  
22 any one calendar year; and

23 (b) achieving a final average time to circulation of a principal opinion of not more than 120  
24 days after submission.

25 (iii) A trial court judge or commissioner demonstrates satisfactory performance by holding:

26 (a) not more than an average of three cases per calendar year under advisement more than  
27 two months after submission with no more than half of the maximum exceptional cases in any  
28 one calendar year; and

29 (b) no case under advisement more than six months after submission.

30 (D) Compliance with education standards. Satisfactory performance is established if the  
31 judge meets the minimum education requirements established by this Code subject to the  
32 availability of in-state education programs. The Council shall measure satisfactory performance  
33 by the self declaration of the judge or commissioner or by reviewing the records of the state  
34 court administrator.

35 (E) Substantial compliance with Code of Judicial Conduct . Satisfactory performance is  
36 established if the response of the judge or commissioner demonstrates substantial compliance  
37 with the Code of Judicial Conduct, if the Council finds the responsive information to be  
38 complete and correct and if the Council's review of formal and informal sanctions lead the  
39 Council to conclude the judge is in substantial compliance with the Code of Judicial Conduct.

40 (F) Physical and mental competence. Satisfactory performance is established if the response  
41 of the judge or commissioner demonstrates physical and mental competence to serve in office  
42 and if the Council finds the responsive information to be complete and correct. The Council may  
43 request a statement by an examining physician.

44 Rule 3-111.04. Evaluation and certification of judges and commissioners.

45 Intent:

1 To establish the procedures by which the Council will evaluate and certify judges for  
2 retention election or reappointment.

3 To establish the procedures by which the Council will evaluate and certify commissioners for  
4 reappointment.

5 Applicability:

6 This rule shall apply to the Judicial Council and to the judges and commissioners of the  
7 courts of record and courts not of record.

8 Statement of the Rule:

9 (A) At its meeting in December of odd-numbered years, the Council shall begin the process  
10 of determining whether the judges subject to election at the next general election meet the  
11 standards of performance provided for in this rule. The Administrative Office of the Courts shall  
12 assemble all evaluation information, including:

13 (i) attorney and juror survey scores;

14 (ii) judicial education records;

15 (iii) self declaration forms;

16 (iv) records of formal and informal sanctions by the Supreme Court; and

17 (v) any information requested by the Council.

18 (B)(i) Prior to the meeting the Administrative Office of the Courts shall deliver the records to  
19 the Council and to the judges being evaluated.

20 (ii) In a session closed in compliance with Rule 2-103, the Council shall consider the  
21 evaluation information and make a preliminary finding of whether a judge met the performance  
22 standards established by Rule 3-111.03.

23 (iii) If the Council finds the judge met the performance standards, it is presumed the Council  
24 will certify the judge be retained in the general election. If the Council finds the judge did not  
25 meet the performance standards, it is presumed the Council will not certify the judge be retained  
26 in the general election. The Council may certify the judge for retention election or withhold  
27 decision until after meeting with the judge.

28 (iv) A presumption against certification may be overcome by a showing of good cause to the  
29 contrary. A presumption in favor of certification may be overcome by:

30 (a) reliable information showing non-compliance with a performance standard; or

31 (b) formal or informal sanctions by the Supreme Court of sufficient gravity or number or  
32 both to demonstrate lack of substantial compliance with the Code of Judicial Conduct.

33 (C) At the request of the Council the judge shall meet with the Council in January. At the  
34 request of the Council the presiding judge and other reviewing judge shall report to the Council  
35 any meetings held with the subject judge, the steps toward self improvement identified as a result  
36 of those meetings, and the efforts to complete those steps. Not later than 5 days after the  
37 December meeting, the Administrative Office of the Courts shall deliver to the judge being  
38 evaluated notice of the Council's action and any records not already delivered to the judge. If the  
39 judge is to meet with the Council, the notice shall contain an adequate description of the reasons  
40 the Council has withheld its decision and the date by which the judge is to deliver written  
41 materials. The Administrative Office of the Courts shall deliver copies of all materials to the  
42 Council and to the judge prior to the January meeting.

43 (D)(i) At its January meeting in a session closed in accordance with Rule 2-103, the Council  
44 shall provide to the judge adequate time to present evidence and arguments in favor of  
45 certification. Any member of the Council may present evidence and arguments of which the

1 judge has had notice opposed to certification. The burden is on the person arguing against the  
2 presumed certification. The Council may determine the order of presentation. The Council may  
3 continue the closed meeting with the judge to the February Council meeting.

4 (ii) At its January or February meeting in open session, the Council shall approve its final  
5 findings and certification regarding all judges standing for retention election at the next general  
6 election.

7 (E) The Council shall approve the statements and descriptions required by §20A-7-702 for  
8 the voter information pamphlet. The judge may review and edit the biographical summary. The  
9 Administrative Office of the Courts shall promptly deliver the approved statement regarding a  
10 judge to the judge and shall deliver the approved statement regarding all judges to the Lt.  
11 Governor no later than August 1. Upon delivery to the Lt. Governor, the Administrative Office  
12 of the Courts shall publish the statement regarding all judges on the Internet.

13 (F) For municipal justice court judges, the Council shall use the same evaluation process as  
14 for judges of the courts of record, but the process shall begin in December of even numbered  
15 years, approximately 14 months prior to the expiration of the municipal judges' terms of office.  
16 The Administrative Office of the Courts shall deliver a statement similar in content and purpose  
17 to the one described in §20A-7-702 to the respective judges and to the Mayor of the judges'  
18 jurisdictions no later than August 1 prior to the expiration of the municipal judges' terms of  
19 office. The Administrative Office of the Courts shall publish the statements on the Internet.

20 (G) For commissioners, the Council shall use the same evaluation process as for judges, but  
21 the Council may remove the commissioner upon the same grounds and statement of reasons for  
22 which it could certify a judge not be retained. The timing of meetings shall be such as to  
23 conclude all steps at least 60 days prior to expiration of the commissioner's term of office. The  
24 Administrative Office of the Courts shall notify the commissioner of the dates of all events and  
25 meetings. The Administrative Office of the Courts shall promptly notify the presiding judge of  
26 the Council's finding, certification and statement of reasons.

27 Rule 3-111.05. Evaluation and certification of senior judges.

28 Intent:

29 To establish a performance evaluation program for active senior judges.

30 Applicability:

31 This rule shall apply to the Judicial Council and to active senior judges of courts of record.

32 Statement of the Rule:

33 (1) Criteria of performance. Active senior judges shall be evaluated and certified using the  
34 performance criteria in Rule 3-111.02.

35 (2) Evaluation information. The evaluation and certification shall be based upon performance  
36 during the senior judge's current term of office. The following information shall be used:

37 (A) Survey of attorneys.

38 (i) The Council shall measure performance by a survey of the attorneys appearing before the  
39 senior judge. The survey shall provide the opportunity for the respondent to comment to the  
40 Council as well as to the senior judge.

41 (ii) The survey shall be administered by the Surveyor.

42 (iii) The Administrative Office of the Courts shall identify as potential respondents all  
43 lawyers who have appeared before the senior judge at a hearing or trial during the senior judge's  
44 current term. The senior judge shall not review the list of potential respondents. The Surveyor

1 shall identify 180 respondents or all the attorneys appearing before the senior judge whichever is  
2 less.

3 (iv) The Surveyor shall report to the Council the number and percentage of respondents for  
4 each of the possible responses on each question.

5 (B) Survey of presiding judges and court staff. The Council shall measure performance by a  
6 survey of all presiding judges and trial court executives of districts in which the judge has been  
7 assigned. The Administrative Office of the Courts shall distribute survey forms with instructions  
8 to return completed surveys to the Surveyor.

9 (C) The Surveyor shall provide the Council with a report of all survey responses for the  
10 senior judge's current term.

11 (3) Standards of performance.

12 (A) Surveys. The Judicial Council shall determine whether the senior judge's scores reported  
13 on the surveys are satisfactory.

14 (B) Cases under advisement. The Council shall measure satisfactory performance by the self-  
15 declaration of the senior judge or by review of the records of the court. The senior judge shall  
16 demonstrate satisfactory performance by complying with the cases under advisement standard in  
17 Rule 3-111.03 for the court in which the judge has been assigned.

18 (C) Compliance with education standards. Satisfactory performance is established if the  
19 senior judge meets the minimum education requirements established by this Code subject to the  
20 availability of in-state education programs. The Council shall measure satisfactory performance  
21 during the current term by the self declaration of the senior judge or by review of records of the  
22 state court administrator.

23 (D) Substantial compliance with Code of Judicial Conduct. Satisfactory performance is  
24 established if the response of the senior judge demonstrates substantial compliance with the  
25 Code of Judicial Conduct and if the Council finds the responsive information to be complete and  
26 correct.

27 (E) Physical and mental competence. Satisfactory performance is established if the response  
28 of the senior judge demonstrates physical and mental competence to serve in office and if the  
29 Council finds the responsive information to be complete and correct. The Council may request a  
30 statement by an examining physician.

31 (4) Judicial Council action. Upon application for appointment under Rule 11-201, the  
32 Administrative Office of the Courts shall provide to the Judicial Council the information  
33 submitted by the senior judge as well as survey scores and any other relevant information to the  
34 Council. The information provided to the Council shall be provided to the senior judge prior to  
35 consideration by the Council. After considering all information, the Council may certify to the  
36 Supreme Court that the applicant meets the qualifications for being an active senior judge.

37 Rule 3-111.06. Administration of the judicial performance evaluation and certification  
38 program.

39 Intent:

40 To provide for the administration of the performance evaluation program for evaluation and  
41 certification.

42 Applicability:

43 This rule shall apply to the Judicial Council and to the Standing Committee on Judicial  
44 Performance Evaluation.

45 Statement of the Rule:

1       (1) The performance evaluation program shall use professionally recognized methods of data  
2 collection which may include surveys, onsite visits, caseload management data and personal  
3 interviews. Information shall be obtained from multiple sources to provide balanced information.  
4 Information from individuals shall be based on personal knowledge of the judge's or  
5 commissioner's performance.

6       (2) The Standing Committee on Judicial Performance Evaluation shall:

7       (A) propose to the Council a schedule of recommended activities and procedures by which to  
8 administer the evaluation and certification program;

9       (B) with the Council's approval, provide a schedule of activities and procedures to all judges  
10 and commissioners;

11       (C) report to the Council recommendations for improving the evaluation and certification  
12 program; and

13       (D) propose to the Council any surveys and amendments. Subjects inquired into by a survey  
14 shall be drawn from but need not include all of the criteria established by Rule 3-111.02.

15       (3) For each judge and commissioner standing for retention election or reappointment, the  
16 Surveyor shall provide to the Council the number and percentage of respondents for each of the  
17 possible responses on each survey question. Without identifying individual judges or  
18 commissioners, the Surveyor shall provide the Council with the survey results for each court  
19 level and geographic region.

20       (4)(A) Except as provided in this Code, judicial performance records relied upon by the  
21 Council in making its findings and certifications are classified as public records upon approval of  
22 the final findings and certifications. Prior to the Council's preliminary findings and certifications,  
23 survey results shall be marked with a code number in order to withhold from the Council the  
24 identity of the judge or commissioner. Upon being classified as a public record, the records shall  
25 identify the judge to whom they pertain.

26       (B) The survey results for each court level and geographic region, without identifying  
27 individual judges or commissioners, are classified as public records.

28       (C) Respondents to surveys shall be anonymous.

29       (5) Geographic regions are:

30       (A) Region 1: Judicial Districts 5, 6, 7, and 8;

31       (B) Region 2: Judicial Districts 1 and 2;

32       (C) Region 3: Judicial District 3;

33       (D) Region 4: Judicial District 4; and

34       (E) Region 5: The Supreme Court and the Court of Appeals.

35       Rule 3-201. Court commissioners.

36       Intent:

37       To define the role of court commissioner.

38       To establish a term of office for court commissioners.

39       To establish uniform administrative policies governing the qualifications, appointment,  
40 supervision, discipline and removal of court commissioners.

41       To establish uniform administrative policies governing the salaries, benefits and privileges of  
42 the office of court commissioner.

43       Applicability:

44       This rule shall apply to all trial courts of record.

45       Statement of the Rule:

1 (1) Definition. Court commissioners are quasi-judicial officers established by ' 78-3-31.

2 (2) Qualifications.

3 (A) Court commissioners must be at least 25 years of age, United States citizens, Utah  
4 residents for three years preceding appointment and residents of Utah while serving as  
5 commissioners. A court commissioner shall reside in a judicial district the commissioner serves.

6 (B) Court commissioners must be admitted to practice law in Utah and exhibit good  
7 character. Court commissioners must possess ability and experience in the areas of law in which  
8 the court commissioner serves.

9 (C) Court commissioners shall serve full time and shall comply with ' 78-7-2.

10 (3) Appointment - Oath of office.

11 (A) Selection of court commissioners shall be based solely upon consideration of fitness for  
12 office.

13 (B) When a vacancy occurs or is about to occur in the office of a court commissioner, the  
14 Council shall determine whether to fill the vacancy. The Council may determine that the court  
15 commissioner will serve more than one judicial district.

16 (C) A committee for the purpose of nominating candidates for the position of court  
17 commissioner shall consist of one judge from each court that the commissioner will serve, three  
18 lawyers, and two members of the public. Committee members shall be appointed by the  
19 presiding judge of the district court of each judicial district. The committee members shall serve  
20 three year terms, staggered so that not more than one term of a member of the bench, bar, or  
21 public expires during the same calendar year. The presiding judge shall designate a chair of the  
22 committee. All members of the committee shall reside in the judicial district. All members of the  
23 committee shall be voting members. A quorum of one-half the committee members is necessary  
24 for the committee to act. The committee shall act by the concurrence of a majority of the  
25 members voting. When voting upon the qualifications of a candidate, the committee shall follow  
26 the voting procedures of the judicial nominating commissions.

27 (D) If the commissioner will serve more than one judicial district, the presiding judges of the  
28 districts involved shall select representatives from each district's nominating committee to form a  
29 joint nominating committee with a size and composition equivalent to that of a district  
30 committee.

31 (E) No member of the committee may vote upon the qualifications of any candidate who is  
32 the spouse of that committee member or is related to that committee member within the third  
33 degree of relationship. No member of the committee may vote upon the qualifications of a  
34 candidate who is associated with that committee member in the practice of law. The committee  
35 member shall declare to the committee any other potential conflict of interest between that  
36 member and any candidate as soon as the member becomes aware of the potential conflict of  
37 interest. The committee shall determine whether the potential conflict of interest will preclude  
38 the member from voting upon the qualifications of any candidate. The committee shall record all  
39 declarations of potential conflicts of interest and the decision of the committee upon the issue.

40 (F) The administrative office of the courts shall advertise for qualified applicants and shall  
41 remove from consideration those applicants who do not meet minimum qualifications of age,  
42 citizenship, residency, and admission to the practice of law. The administrative office of the  
43 courts shall develop uniform guidelines for the application process for court commissioners.

44 (G) The nominating committee shall review the applications of qualified applicants and may  
45 investigate the qualifications of applicants to its satisfaction. The committee shall interview



1 selected applicants and select the three best qualified candidates. The committee may indicate its  
2 order of preference. The chair of the committee shall present the names, applications, and the  
3 results of background investigations of the nominees to the judges of the courts the court  
4 commissioner will serve.

5 (H) The judges of the courts the court commissioner will serve shall select one of the  
6 nominees by a concurrence of a majority of judges voting. The concurrence of each court  
7 independent of the others is necessary for selection.

8 (I) The presiding judge of the district court of the district the court commissioner will  
9 primarily serve shall present the name of the selected candidate to the Council. The selection  
10 shall be final upon the concurrence of two-thirds of the members of the Council. The Council  
11 shall vote upon the selection within 45 days of the selection or the concurrence of the Council  
12 shall be deemed granted.

13 (J) If the Council does not concur in the selection, the judges of the district may select  
14 another of the nominees or a new nominating process will be commenced.

15 (K) The appointment shall be effective upon the court commissioner taking and subscribing  
16 to the oath of office required by the Utah Constitution and taking any other steps necessary to  
17 qualify for office. The court commissioner shall qualify for office within 45 days after the  
18 concurrence by the Council.

19 (4) Term of office. The court commissioner shall be appointed for a term of four years. At  
20 the conclusion of each term of office, the court commissioner shall be retained for a subsequent  
21 term of four years unless the judges of the courts the commissioner serves remove the  
22 commissioner in accordance with paragraph (6)(B). The initial term of office of court  
23 commissioners holding office on June 30, 1992 shall commence July 1, 1992.

24 (5) Performance evaluation. The presiding judge or judges of the district shall develop a  
25 performance plan for the court commissioner and shall prepare an evaluation of the  
26 commissioner's performance on an annual basis. A copy of the performance plan and any  
27 subsequent evaluation shall be maintained in the official personnel file in the administrative  
28 office. Court commissioners shall comply with the program for judicial performance evaluation  
29 pursuant to Rules 3-110 and 3-111.

30 (6) Removal and sanctions.

31 (A) If the commissioner's performance is not satisfactory, the presiding judge, with the  
32 concurrence of the judges of that jurisdiction, may discipline the commissioner or remove the  
33 commissioner from office. If the commissioner disagrees with the presiding judge's decision, the  
34 commissioner may request a review of the decision by the Management Committee of the  
35 Council.

36 (B) The court commissioner may be removed by the Council:

37 (i) as part of a reduction in force;

38 (ii) for failure to meet the evaluation and certification requirements ~~of Rules 3-110 and 3-~~  
39 ~~111; or~~

40 (iii) as the result of a formal complaint filed under CJA Rule 3-201.02 upon the concurrence  
41 of two-thirds of the Council.

42 (C) The court commissioner may be removed without cause by the judges of the courts the  
43 commissioner serves at the conclusion of a term of office. Removal under this paragraph shall be  
44 by the concurrence of a majority of all judges of the courts the commissioner serves. A decision  
45 to remove a commissioner under this paragraph shall be communicated to the commissioner



1 within a reasonable time after the decision is made, and not less than 30 days prior to  
2 termination.

3 (D) The court commissioner may be sanctioned by the Council as the result of a formal  
4 complaint or by the presiding judge or judges of the courts the commissioner serves. Sanctions  
5 may include but are not limited to private or public censure, restrictions in case assignments,  
6 mandatory remedial education, suspension for a period not to exceed 60 days, and reduction in  
7 salary.

8 (7) Salaries and benefits.

9 (A) The Council shall annually establish the salary of court commissioners. In determining  
10 the salary of the court commissioners, the Council shall consider the effect of any salary increase  
11 for judges authorized by the Legislature and other relevant factors. Except as provided in  
12 paragraph (6), the salary of a commissioner shall not be reduced during the commissioner's  
13 tenure.

14 (B) Court commissioners shall receive annual leave of 20 days per calendar year and the  
15 same sick leave benefits as judges of the courts of record. Annual leave not used at the end of the  
16 calendar year shall not accrue to the following year. A commissioner hired part way through the  
17 year shall receive annual leave on a pro rated basis. Court commissioners shall receive the same  
18 retirement benefits as non-judicial officers employed in the judicial branch.

19 (8) Support services.

20 (A) Court commissioners shall be provided with support personnel, equipment, and supplies  
21 necessary to carry out the duties of the office as determined by the presiding judge.

22 (B) Court commissioners are responsible for requesting necessary support services from the  
23 presiding judge.

24 Rule 3-407. Accounting.

25 Intent:

26 To establish uniform procedures for the processing, tracking, and reporting of accounts  
27 receivable and trust accounts.

28 Applicability:

29 This rule applies to the judiciary.

30 Statement of the Rule:

31 (1) Manual of procedures.

32 (A) The administrative office shall develop a manual of procedures to govern accounts  
33 receivable, accounts payable, trust accounts, the audit thereof, and the audit of administrative  
34 procedures generally. The procedures shall be in conformity with generally accepted principles  
35 of budgeting and accounting and shall, at a minimum, conform to the requirements of this Code  
36 and state law. Unless otherwise directed by the Judicial Council, the manual of procedures and  
37 amendments to it shall be approved by the majority vote of the state court administrator, the  
38 court administrators for each court of record, and the director of finance.

39 (B) There is established an accounting manual review committee responsible for making and  
40 reviewing proposals for repealing accounting policies and procedures and proposals for  
41 promulgating new and amended accounting policies and procedures. The committee shall consist  
42 of the following:

43 (i) the director of finance or designee, who shall serve as chair and shall vote only in the  
44 event of a tie;

45 (ii) four support services coordinators;

1 (iii) two accountants or clerks with accounting responsibilities from each of the trial courts of  
2 record;

3 (iv) a trial court executive;

4 (v) a clerk with accounting responsibilities from an appellate court;

5 (vi) one court services field specialist;

6 (vii) the audit manager or designee, who shall not vote; and

7 (viii) the director of the state division of finance or designee, who shall not vote.

8 (C) Unless designated by office, members of the committee shall be appointed in a manner  
9 consistent with CJA Rule 1-205. The department of finance shall provide necessary support to  
10 the committee.

11 (D) New and amended policies and procedures recommended by the committee shall be  
12 reviewed by the court executives prior to being submitted to the Judicial Council or to the vote of  
13 the administrators and the director of finance. The Court Executives may endorse or amend the  
14 draft policies and procedures or return the draft policies and procedures to the committee for  
15 further consideration.

16 (2) Revenue accounts.

17 (A) Deposits; transfers; withdrawals. All courts shall deposit with a depository determined  
18 qualified by the administrative office or make deposits directly with the Utah State Treasurer or  
19 the treasurer of the appropriate local government entity. The Supreme Court, Court of Appeals,  
20 State Law Library, administrative office, district court primary locations and juvenile courts shall  
21 deposit daily, whenever practicable, but not less than once every three days. The deposit shall  
22 consist of all court collections of state money. District court contract sites and justice courts  
23 having funds due to the state or any political subdivision of the state shall, on or before the 10th  
24 day of each month, deposit all funds received by them in the preceding month in a qualified  
25 depository with the appropriate public treasurer. The courts shall make no withdrawals from  
26 depository accounts.

27 (B) Periodic revenue report. Under the supervision of the court executive, the clerk of the  
28 court shall prepare and submit a revenue report that identifies the amount and source of the funds  
29 received during the reporting period and the state or local government entity entitled to the funds.  
30 Juvenile courts and primary locations of the district courts shall submit the report weekly to the  
31 administrative office. District court contract sites shall submit the report at least monthly,  
32 together with a check for the state portion of revenue, to the administrative office. Justice courts  
33 shall submit the report monthly, together with a check for the state revenue collected, to the Utah  
34 State Treasurer.

35 (C) Monthly reconciliation of bank statement. The administrative office shall reconcile the  
36 revenue account upon receipt of the weekly revenue report from the courts and the monthly bank  
37 statements.

38 (3) Trust accounts.

39 (A) Definition. Trust accounts are accounts established by the courts for the benefit of third  
40 parties. Examples of funds which are held in trust accounts include restitution, child support, and  
41 bail amounts.

42 (B) Accounts required; duties of a fiduciary. District court primary locations and juvenile  
43 courts shall maintain a trust account in which to deposit monies held in trust for the benefit of the  
44 trustor or some other beneficiary. Under supervision of the court executive, the clerk of the court  
45 shall be the custodian of the account and shall have the duties of a trustee as established by law.

1 All other courts of record and not of record may maintain a trust account in accordance with the  
2 provisions of this rule.

3 (C) Monthly reconciliation of bank statement. Each court shall reconcile its ledgers upon  
4 receipt of the monthly bank statement and submit the reconciliation to the administrative office.

5 (D) Accounting to trustor. The courts shall establish a method of accounting that will trace  
6 the debits and credits attributable to each trustor.

7 (E) Bail forfeitures; other withdrawals. Transfers from trust accounts to a revenue account  
8 may be made upon an order of forfeiture of bail or other order of the court. Other withdrawals  
9 from trust accounts shall be made upon the order of the court after a finding of entitlement.

10 (F) Interest bearing.

11 ~~(F) All trust accounts shall be interest bearing. The disposition of interest shall be governed~~  
12 ~~by Rule 4-301. The administrative office shall develop procedures which provide for interest to~~  
13 ~~accrue either to the state or to the litigants in accordance with Utah Code Ann. '78-27-4(3)(a).~~

14 ~~(ii) For trust amounts in excess of \$5,000, the court may order or the litigant may request that~~  
15 ~~such funds be deposited in an interest bearing escrow account. The account shall be at an~~  
16 ~~institution designated by the administrative office unless otherwise ordered by the court.~~

17 ~~(iii) For interest bearing accounts established at the request of the litigant or by court order,~~  
18 ~~an administrative fee, in an amount established by the Council, shall be assessed. The account~~  
19 ~~shall be maintained in the name of the court, and the State tax identification number shall be~~  
20 ~~used. The court shall, in all orders providing for the withdrawal of trust funds, designate the~~  
21 ~~person or entity to whom the earned interest is awarded.~~

22 (4) Compliance. The administrative office and the courts shall comply with state law and the  
23 manual of procedures adopted by the administrative office.

24 The amendments to Rule 3-501(5) were approved by the Judicial Council effective February  
25 26, 2001 pursuant to Rule 2-205. The balance of the amendments are effective November 1,  
26 2001.

27 Rule 3-501. Insurance benefits upon retirement.

28 Intent:

29 To establish uniform policies regarding sick leave for justices, judges, and court  
30 commissioners and conversion of sick leave to paid up medical, dental and life insurance at the  
31 time of retirement.

32 Applicability:

33 This rule shall apply to all justices, judges, and court commissioners of courts of record.

34 Statement of the Rule:

35 (1) Earned benefits.

36 (A) For each year of full-time employment that a justice, judge, or court commissioner uses  
37 less than four days of sick leave in a calendar year, the judge, justice, or court commissioner will  
38 be eligible for and accumulate eight months of paid up medical insurance, dental insurance,  
39 prescription drug insurance and life insurance benefits at the time of retirement. Upon retirement,  
40 the submission of an annual application and a showing that the judge, justice, or court  
41 commissioner is not otherwise covered by a comparable medical insurance policy, the judge,  
42 justice, or court commissioner shall be eligible for and receive the insurance benefits which have  
43 accrued.

44 (B) Maternity leave is considered sick leave for determining benefits under this rule.  
45 ~~Medicare is considered a comparable insurance policy for determining benefits under this rule.~~

1       ~~(2) (C)~~ Medical and dental insurance coverage provided will be the same as that carried by  
2 the justice, judge, or court commissioner at retirement, i.e., family, two party, single, ~~until the~~  
3 ~~judge, justice, or court commissioner becomes eligible for Medicare, at which time the dental~~  
4 ~~and life insurance coverage is terminated. After reaching age 65, supplemental Medicare~~  
5 ~~insurance coverage with prescription benefits will be provided. The spouse of the justice, judge,~~  
6 ~~or court commissioner will continue to receive the same medical insurance benefits until~~  
7 ~~becoming eligible for Medicare. At that time, the spouse will be converted to Medicare~~  
8 ~~supplemental insurance with prescription benefits.~~

9       ~~(3)~~ The payment of medical, dental and life insurance premiums and/or Medicare supplement  
10 premiums through conversion of unused sick leave shall not exceed seven years. The seven year  
11 eligibility period will begin on the effective date of the justice's, judge's, or court commissioner's  
12 retirement.

13       ~~(4) (2)~~ Automatic benefits. Notwithstanding the provisions of paragraph (1), a justice, judge,  
14 or court commissioner who retires and who is eligible for retirement benefits at the time of  
15 retirement shall receive a maximum of five years ~~health—~~ medical insurance, dental insurance,  
16 prescription drug insurance and life insurance ~~which shall terminate upon the justice's, judge's,~~  
17 ~~or court commissioner's 65th birthday.~~

18       ~~(5) (3)~~ Duration of benefits.

19       ~~(A)~~ The duration of benefits shall be calculated from the effective date of the justice's,  
20 judge's, or court commissioner's retirement. Earned benefits shall not exceed seven years.  
21 Automatic benefits shall not exceed five years. Earned benefits and automatic benefits provided  
22 pursuant to this rule shall not exceed seven years from the effective date of the justice's, judge's,  
23 or court commissioner's retirement.

24       ~~(B)~~ Earned benefits and automatic benefits shall terminate when the justice, judge, or  
25 commissioner is eligible for Medicare, except that prescription drug insurance and supplemental  
26 Medicare insurance shall continue for the balance of the term of earned or automatic benefits.

27       ~~(C)~~ If the spouse of the justice, judge, or court commissioner qualifies for medical insurance,  
28 prescription drug insurance or dental insurance under subsection (1)(C), such insurance shall  
29 continue for the period of earned or automatic benefits or until the spouse becomes eligible for  
30 Medicare, whichever is earlier, except that prescription drug insurance and supplemental  
31 Medicare insurance for the spouse shall continue for the balance of the term of earned or  
32 automatic benefits.

33       ~~(D)~~ Benefits for dependents of the justice, judge, or court commissioner terminate when the  
34 justice, judge, or court commissioner reaches age 65.

35       ~~(6) (4)~~ As authorized by Utah Code Ann. Section 78-3-24(9), the Court Administrator will  
36 develop methods for recording sick leave use by justices, judges, and court commissioners and  
37 for recording sick leave conversion to paid up medical, dental and life insurance benefits.

38       ~~(5)~~ Active Senior Judge incentive benefit.

39       ~~(A)~~ The judiciary will pay 50% of the cost of medical and dental insurance premiums for a  
40 qualifying senior judge and spouse until the qualifying senior judge is age 65. The judiciary will  
41 pay 50% of the cost of supplemental Medicare insurance and prescription drugs for a qualifying  
42 senior judge and spouse if the senior judge is age 65 or older.

43       ~~(B)~~ To qualify for the incentive benefit the senior judge must:

44       ~~(i)~~ qualify as an active senior judge pursuant to Rule 11-201;

45       ~~(ii)~~ have exhausted the other benefits provided for by this rule;

1        (iii) submit to the state court administrator or designee on or before July 1 of each year a  
2 letter expressing an intent to participate in the incentive benefit program;

3        (iv) perform case work, subject to being called, for at least 6 days per fiscal year; and

4        (v) show good cause to the Judicial Council why he or she should not be disqualified for the  
5 incentive benefit upon declining three times within any fiscal year to accept case work.

6        (C) The State Retirement Office shall deduct from the active senior judge's retirement  
7 benefit the portion of the cost payable by the active senior judge.

8        ~~(7)~~ (6) This policy will be implemented subject to availability of funds.

9        Rule 4-202.02. Records classification.

10       Intent:

11       To classify records created or maintained by the judicial branch.

12       Applicability:

13       This rule applies to all courts of record and not of record and to the Administrative Office of  
14 the Courts.

15       Statement of the Rule:

16       (1) Public administrative records. The following administrative records are public, except to  
17 the extent they are classified otherwise or contain information classified otherwise by this or  
18 other Council rule, or by conflicting state or federal statute, regulation or rule:

19       (A) court rules, rules of judicial administration, and administrative orders;

20       (B) the following publications from the administrative office: annual reports, fine/bail  
21 schedule, records retention schedules, benchbooks, justice court manuals, staff manuals,  
22 instructions to staff, statements of policy, personnel policies and procedures, special reports,  
23 judicial nominating commission procedures, and final reports of special task forces, committees  
24 or commissions after the same have been released by the Council or the court that requested the  
25 study;

26       (C) names, gender, gross compensation (reported as gross salary and benefits), job titles, job  
27 descriptions, business addresses, business telephone numbers, number of hours worked per pay  
28 period, dates of employment, and relevant education, previous employment, and similar job  
29 qualifications of former and present employees and officers;

30       (D) final opinions, including concurring and dissenting opinions, and orders that are made in  
31 administrative or adjudicative proceedings, except that if the proceedings were properly closed to  
32 the public, the opinion and order may be withheld to the extent that they contain information that  
33 is private, controlled, or protected;

34       (E) final interpretations of statutes or rules, unless they are prepared in anticipation of  
35 litigation and are not subject to discovery, are attorney work product, or contain privileged  
36 communications between the judicial branch and an attorney;

37       (F) information contained in or compiled from a transcript, minutes, or report of the open  
38 portions of a meeting of a governmental entity as provided by Utah Code Title 52, Chapter 4,  
39 including the record of all votes;

40       (G) data on individuals that would otherwise be private if the individual who is the subject of  
41 the record has given written permission to make the records available to the public;

42       (H) documentation of the compensation that is paid to a contractor or private provider;

43       (I) summary data;

44       (J) records documenting a contractor's or private provider's compliance with the terms of a  
45 contract;

1 (K) records documenting the services provided by a contractor or a private provider to the  
2 extent the records would be public if prepared by the judicial branch;

3 (L) contracts entered into by the judicial branch;

4 (M) any account, voucher, or contract that deals with the receipt or expenditure of funds;

5 (N) correspondence by and with the judicial branch in which the judicial branch determines  
6 or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

7 (O) empirical data contained in drafts if the empirical data is not reasonably available to the  
8 requester elsewhere in similar form and if the judicial branch is given a reasonable opportunity to  
9 correct any errors or make nonsubstantive changes before release;

10 (P) drafts that are circulated to anyone other than a governmental entity, a political  
11 subdivision, a federal agency if the judicial branch and the federal agency are jointly responsible  
12 for implementation of a program or project that has been legislatively approved, a government-  
13 managed corporation, or a contractor or private provider;

14 (Q) drafts that have never been finalized but were relied upon in carrying out action or  
15 policy;

16 (R) original data in a computer program if the judicial branch chooses not to disclose the  
17 program;

18 (S) arrest warrants after issuance, except that, for good cause, a court may order restricted  
19 access to arrest warrants prior to service;

20 (T) search warrants after execution and filing of the return, except that a court, for good  
21 cause, may order restricted access to search warrants prior to trial;

22 (U) records that would disclose information relating to formal charges or disciplinary actions  
23 against a past or present judicial branch employee if the disciplinary action has been completed  
24 and all time periods for administrative appeal have expired, and if the formal charges were  
25 sustained;

26 (V) final audit reports;

27 (W) a notice of violation, a notice of agency action under § 63-46b-3, or similar records used  
28 to initiate proceedings for discipline or sanctions against persons regulated by the judicial  
29 branch, but not including records that initiate employee discipline.

30 (2) Public judicial records. The following judicial records are public, except to the extent  
31 they are classified otherwise or contain information classified otherwise by this or other Council  
32 rule, or by conflicting state or federal statute, regulation or rule:

33 (A) casefiles;

34 (B) a copy of the official court record or official minutes of an open court hearing and any  
35 transcript of them; and

36 (C) exhibits which have been offered, identified, marked and admitted in any proceeding in  
37 accordance with Rule 4-206.

38 (D) Notwithstanding Rule 4-202.02(9) and Rule 4-202.03(9), if a petition, indictment, or  
39 information is filed charging a person 14 years of age or older with a felony or an offense that  
40 would be a felony if committed by an adult, the petition, indictment or information, the  
41 adjudication order, the disposition order, and the delinquency history summary of the juvenile  
42 are public records in accordance with § 78-3a-206. The delinquency history summary shall  
43 contain:

44 (i) the name of the juvenile;

1 (ii) a listing in chronological order of the infractions, misdemeanors, and felonies for which  
2 the juvenile was adjudged to be within the jurisdiction of the juvenile court; and

3 (iii) the disposition of the court in each of those offenses.

4 (3) Private administrative records. The following administrative records are private:

5 (A) records concerning an individual's eligibility for unemployment insurance benefits, social  
6 services, welfare benefits, or the determination of benefit levels;

7 (B) records containing data on individuals describing medical history, diagnosis, condition,  
8 treatment, evaluation, or similar medical data;

9 (C) the personnel file of a current or former employee or applicant for employment;

10 (D) records associated with the informal reprimand of an individual;

11 (E) records describing an individual's finances;

12 (F) other records containing data on individuals the disclosure of which constitutes an  
13 unwarranted invasion of personal privacy;

14 (G) records provided by the United States or by a government entity outside the state that are  
15 given with the requirement that the records be managed as private records, if the providing entity  
16 states in writing that the record would not be subject to public disclosure if retained by it.

17 (4) Private judicial records. The following judicial records are private:

18 (A) sealed divorce records;

19 (B) driver's license histories;

20 (C) records involving the commitment of a person under Utah Code, Title 62A, Chapter 12;  
21 and

22 (D)(i) records containing the name, address or telephone number of a juror or prospective  
23 juror or other information from which a juror or prospective juror could be identified or located.

24 (ii) The judge may order the jurors' records released to the parties or counsel upon the trial of  
25 the case, provided the judge orders the parties and counsel not to copy the records or permit the  
26 records to be viewed or copied by any other person.

27 (iii) After the judge has discharged the jurors, the names of the jurors who tried the case shall  
28 be a public record, unless a juror requests that his or her name be a private record and the judge  
29 finds that the interests favoring privacy outweigh the interests favoring public access. In the  
30 interests of justice the judge may delay release of the names for up to 5 business days after  
31 discharging the jurors.

32 (iv) The judge may seal the records of the jurors' names upon its own or a party's motion if  
33 the judge:

34 (a) provides advance written notice to any media representative who requests such notice in  
35 that case, to the parties, and to the jurors;

36 (b) holds a hearing, which must be open to the greatest extent possible;

37 (c) permits any responsible person to participate in the hearing to the extent consistent with  
38 orderly court procedures;

39 (d) determines there are compelling countervailing interests that support sealing the records;

40 (e) determines there are no reasonable alternatives to sealing the records sufficient to protect  
41 the countervailing interests; and

42 (f) supports the order to seal the records with written findings and conclusions.

43 (5) Controlled administrative records. The following administrative records are controlled:

44 (A) records which contain medical, psychiatric, or psychological data about an individual;

1 (B) any record which the judicial branch reasonably believes would be detrimental to the  
2 subject's mental health or to the safety of an individual if released;

3 (C) any record which the judicial branch reasonably believes would constitute a violation of  
4 normal professional practice or medical ethics if released.

5 (6) Controlled judicial records. The following judicial records are controlled:

6 (A) records which contain medical, psychiatric, or psychological data about an individual;

7 (B) custodial evaluations or home studies;

8 (C) presentence reports;

9 (D) the official court record or official minutes of court sessions closed to the public and any  
10 transcript of them:

11 (i) permanently if the hearing is not traditionally open to the public and public access does  
12 not play a significant positive role in the process; or

13 (ii) if the hearing is traditionally open to the public, until the judge determines it is possible to  
14 release the record to the public without prejudice to the interests that justified the closure of the  
15 hearing;

16 (E) any record which the judicial branch reasonably believes would be detrimental to the  
17 subject's mental health or to the safety of an individual if released;

18 (F) any record which the judicial branch reasonably believes would constitute a violation of  
19 normal professional practice or medical ethics if released.

20 (7) Protected administrative records. The following administrative records are protected:

21 (A) trade secrets as defined in Utah Code § 13-24-2 if the person submitting the trade secret  
22 has provided the judicial branch with the information specified in Utah Code § 63-2-308;

23 (B) commercial information or nonindividual financial information obtained from a person if  
24 disclosure of the information could reasonably be expected to result in unfair competitive injury  
25 to the person submitting the information or would impair the ability of the governmental entity to  
26 obtain necessary information in the future, the person submitting the information has a greater  
27 interest in prohibiting access than the public in obtaining access, and the person submitting the  
28 information has provided the judicial branch with the information specified in Utah Code § 63-2-  
29 308;

30 (C) test questions and answers to be used in future license, certification, registration,  
31 employment, or academic examinations;

32 (D) records the disclosure of which would impair governmental procurement proceedings or  
33 give an unfair advantage to any person proposing to enter into a contract or agreement with the  
34 judicial branch, except that this subparagraph does not restrict the right of a person to see bids  
35 submitted to or by the judicial branch after bidding has closed;

36 (E) records that would identify real property or the appraisal or estimated value of real or  
37 personal property, including intellectual property, under consideration for public acquisition  
38 before any rights to the property are acquired unless: public interest in obtaining access to the  
39 information outweighs the judicial branch's need to acquire the property on the best terms  
40 possible; the information has already been disclosed to persons not employed by or under a duty  
41 of confidentiality to the entity; in the case of records that would identify property, potential  
42 sellers of the described property have already learned of the judicial branch's plans to acquire the  
43 property; or, in the case of records that would identify the appraisal or estimated value of  
44 property, the potential sellers have already learned of the judicial branch's estimated value of the  
45 property;



1 (F) records prepared in contemplation of sale, exchange, lease, rental, or other compensated  
2 transaction of real or personal property including intellectual property, before the transaction is  
3 completed, which, if disclosed prior to completion of the transaction, would reveal the appraisal  
4 or estimated value of the subject property, unless: the public interest in access outweighs the  
5 interests in restricting access, including the judicial branch's interest in maximizing the financial  
6 benefit of the transaction; or when prepared by or on behalf of the judicial branch, appraisals or  
7 estimates of the value of the subject property have already been disclosed to persons not  
8 employed by or under a duty of confidentiality to the judicial branch.

9 (G) records created or maintained for civil, criminal, or administrative enforcement purposes  
10 or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of  
11 the records:

12 (i) reasonably could be expected to interfere with investigations undertaken for enforcement,  
13 discipline, licensing, certification, or registration purposes;

14 (ii) reasonably could be expected to interfere with audits, or disciplinary or enforcement  
15 proceedings;

16 (iii) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

17 (iv) reasonably could be expected to disclose the identity of a source who is not generally  
18 known outside of government and, in the case of a record compiled in the course of an  
19 investigation, disclose information furnished by a source not generally known outside of  
20 government if disclosure would compromise the source; or

21 (v) reasonably could be expected to disclose investigative or audit techniques, procedures,  
22 policies, or orders not generally known outside of government if disclosure would interfere with  
23 enforcement or audit efforts;

24 (H) records the disclosure of which would jeopardize the life or safety of an individual,  
25 including court security plans;

26 (I) records the disclosure of which would jeopardize the security of governmental property,  
27 governmental programs, or governmental record-keeping systems from damage, theft, or other  
28 appropriation or use contrary to law or public policy;

29 (J) records that, if disclosed, would jeopardize the security or safety of a correctional facility,  
30 or records relating to incarceration, treatment, probation, or parole, that would interfere with the  
31 control and supervision of an offender's incarceration, treatment, probation, or parole;

32 (K) records relating to an ongoing or planned audit until the final audit is released;

33 (L) records prepared by or on behalf of the judicial branch solely in anticipation of litigation  
34 that are not available under the rules of discovery;

35 (M) records disclosing an attorney's work product, including the mental impressions or legal  
36 theories of an attorney or other representative of the judicial branch concerning litigation;

37 (N) records of communications between the judicial branch and an attorney representing,  
38 retained, or employed by the judicial branch if the communications would be considered  
39 privileged;

40 (O) drafts, unless otherwise classified as public;

41 (P) records concerning the judicial branch's strategy about collective bargaining or pending  
42 litigation;

43 (Q) records of investigations of loss occurrences and analyses of loss occurrences that may  
44 be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured  
45 Employers' Fund, or similar divisions;

1 (R) records, other than personnel evaluations, that contain a personal recommendation  
2 concerning an individual if disclosure would constitute an unwarranted invasion of personal  
3 privacy, or disclosure is not in the public interest;

4 (S) budget recommendations, legislative proposals, and policy statements, that if disclosed  
5 would reveal the judicial branch's contemplated policies or contemplated courses of action before  
6 the judicial branch has implemented or rejected those policies or courses of action or made them  
7 public;

8 (T) budget analyses, revenue estimates, and fiscal notes of proposed legislation before  
9 issuance of the final recommendations in these areas;

10 (U) records provided by the United States or by a government entity outside the state that are  
11 given to the judicial branch with a requirement that they be managed as protected records if the  
12 providing entity certifies that the record would not be subject to public disclosure if retained by  
13 it;

14 (V) transcripts, minutes, or reports of the closed portion of a meeting of a public body except  
15 as provided in Utah Code § 52-4-7;

16 (W) records that would reveal the contents of settlement negotiations but not including final  
17 settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

18 (X) memoranda prepared by staff and used in the decision-making process by a member of  
19 any body charged by law with performing a quasi-judicial function.

20 (8) Protected judicial records. The following judicial records are protected:

21 (A) personal notes or memoranda prepared by a judge or any person charged by law with  
22 performing a judicial function and used in the decision-making process;

23 (B) drafts of opinions or orders;

24 (C) memoranda prepared by staff for a member of any body charged by law with performing  
25 a judicial function and used in the decision-making process.

26 (9) Juvenile court legal records. The following judicial records are juvenile court legal  
27 records:

28 (A) all petitions, pleadings, summonses, subpoenas, motions, affidavits, minutes, findings,  
29 orders, decrees;

30 (B) accounting records;

31 (C) referral and offense histories;

32 (D) exhibits and other documents introduced and admitted into evidence in a hearing;

33 (E) electronic recordings or reporter recordings of testimony in court proceedings;

34 (F) depositions or interrogatories filed in a case;

35 (G) transcripts of court proceedings.

36 (10) Juvenile court social and probation records. The following judicial records are juvenile  
37 court social and probation records:

38 (A) referral reports or forms;

39 (B) reports of preliminary inquiries;

40 (C) pre-disposition and social summary reports;

41 (D) home studies and custody evaluations;

42 (E) psychological, psychiatric and medical evaluations;

43 (F) probation, agency and institutional reports or evaluations;

44 (G) treatment or service plans;

45 (H) correspondence relating to the foregoing records or reports.

(11) Sealed judicial records. The following judicial records are sealed:

(A) adoption casefiles.

(12) Expunged judicial records. The following judicial records are expunged:

(A) casefiles which have been expunged by court order pursuant to Council rules and applicable statutes.

### Article 3. Court Fees and Trust Accounts

Rule 4-301. Trust Accounts.

Intent:

To establish a procedure for the disposition of interest on trust accounts pursuant to Utah Code Section 78-27-4.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) Unless otherwise provided by this rule, interest on trust accounts accrues to the state.

(2) Accrual of interest on trust account to a litigant.

(a) For trust amounts in excess of \$5,000, the court may order or the litigant may request that such funds be deposited in an interest bearing trust account.

(b) No interest bearing trust account will be established until a litigant completes and files with the court an Interest Bearing Trust Agreement.

(c) The interest bearing trust account shall be at an institution designated by the administrative office unless otherwise ordered by the court. The account shall be maintained in the name of the court, and the State tax identification number of the litigant(s) depositing the funds shall be used.

(d) An administrative fee, in an amount established by the Council, shall be assessed.

(e) The court shall, in all orders providing for the withdrawal of trust funds, designate the person or entity to whom the earned interest is awarded.

Rule 4-404. Jury selection and service.

Intent:

To establish the process for transition from the master jury lists maintained by the county clerks and those maintained by the Judicial Council.

To establish a uniform procedure for jury selection, qualification, and service.

To establish administrative responsibility for jury selection.

To ensure that jurors are well informed of the purpose and nature of the obligations of their service at each stage of the proceedings.

Applicability:

This rule shall apply to all trial courts.

Statement of the Rule:

(1) Transition from county master jury list.

(A) Under § 78-46-11 (repealed Chapter 219, Laws of Utah 1992), the master jury lists established by the several county clerks in December 1991 are valid as the source of prospective jurors for one year. The authority to establish and draw names from the master jury list for each county shifts from the several county clerks to the Judicial Council on July 1, 1992. A jury panel for a trial initiated or conducted on or after July 1, 1992 is a valid panel if formed from a master jury list valid at the time the names of the panel's jurors were drawn from the master list under § 78-46-12. A jury panel formed from a December 1991 master list for a trial initiated or

1 conducted on or after July 1 is valid if the names of the panel's jurors were drawn from that  
2 master jury list pursuant to § 78-46-12 on or before June 30, 1992.

3 (B) The initial master jury lists of the Judicial Council will be established July 1992. Under  
4 paragraph (2)(C) of this rule all courts are required to select names from these initial master jury  
5 lists for qualification. To qualify prospective jurors and prepare them for service on a jury panel  
6 requires approximately three months. Therefore, the Judicial Council recognizes the validity of a  
7 jury panel formed from a December 1991 master list for a trial initiated or conducted on or after  
8 July 1 and on or before September 30, 1992 if the names of prospective jurors were drawn from  
9 that master jury list pursuant to § 78-46-12 on or before June 30, 1992.

10 (2) Master jury list and jury source lists; periodic review.

11 (A) The state court administrator shall maintain a master jury list as defined by Utah Code  
12 Ann. § 78-46-4 for each county.

13 (B) The master jury list for each county shall be a compilation of the following source lists:

14 (i) licensed drivers of the county who are 18 years of age or older; and

15 (ii) the official register of voters of the county.

16 (C) The Judicial Council may direct the use of additional source lists to improve, if  
17 necessary, the inclusiveness of the master jury list for a county.

18 (D) Twice per year the state court administrator shall obtain from the person responsible for  
19 maintaining each source list a new edition of the list reflecting any additions, deletions, and  
20 amendments to the list. The state court administrator shall renew the master jury list for each  
21 county by incorporating the new or changed information. The master jury list shall be established  
22 in January and July. Prospective jurors shall be selected and qualified from the January list for  
23 trials initiated in April through September and from the July list for trials initiated in October  
24 through March.

25 (E) The master jury list shall contain the name, address, and date of birth for each person  
26 listed and any other identifying or demographic information deemed necessary by the state court  
27 administrator.

28 (F) The state court administrator shall compare the number of persons on each master jury  
29 list for a county with the population of the county 18 years of age and older as reported by the  
30 Economic and Demographic Data Projections published for the year by the Office of Planning  
31 and Budget. The state court administrator shall report the comparison to the Judicial Council at  
32 its planning workshop during even numbered years. The first report is due in 1994. The sole  
33 purpose of this report is to improve, if necessary, the inclusiveness of the master jury list.

34 (3) Term of service and term of availability of jurors.

35 (A) The following shall constitute satisfactory completion of a term of service of a juror:

36 (i) unless otherwise ordered by the court service on a jury panel for one trial whether as a  
37 primary or alternate juror regardless of whether the jury is called upon to deliberate or return a  
38 verdict;

39 (ii) unless otherwise ordered by the court, reporting to the courthouse for potential service as  
40 a juror five times; or

41 (iii) expiration of the term of availability.

42 (B) The term of availability of jurors shall be:

43 (i) one month for the trial courts of record in Salt Lake county;

44 (ii) three months for the trial courts of record in Davis, Utah, and Weber counties; and

45 (iii) six months for all other courts unless otherwise ordered by the court.

1 (4) Random selection procedures.

2 (A) Random selection procedures shall be used in selecting persons from the master jury list  
3 for the qualified jury list.

4 (B) Courts may depart from the principal of random selection in order to excuse or defer a  
5 juror in accordance with statute or these rules and to remove jurors challenged for cause or  
6 peremptorily.

7 (5) Qualified jury list.

8 (A) For each term of availability as defined above, the state court administrator shall provide,  
9 based on a random selection, to the court the number of jurors requested by that court. This shall  
10 be the list from which the court qualifies prospective jurors. The names of prospective jurors  
11 shall be delivered to the requesting court in the random order in which they were selected from  
12 the master jury list. The court shall maintain that random order through summons, assignment to  
13 panels, selection for voir dire, peremptory challenges, and final call to serve as a juror; or the  
14 court may rerandomize the names of jurors at any step.

15 (B) For each term of availability the court should request no more than the number of  
16 prospective jurors reasonably calculated to permit the selection of a full jury panel with  
17 alternates if applicable for each trial scheduled or likely to be scheduled during the term. The  
18 number of prospective jurors requested should be based upon the size of the panel plus any  
19 alternates plus the total number of peremptory challenges plus the anticipated number of  
20 prospective jurors to be excused or deferred from service or removed for cause less the number  
21 of jurors excused or deferred to that term.

22 (C) The clerk of the court shall mail to each prospective juror a qualification form. The  
23 prospective juror shall return the form to the clerk within ten days after it is received. The state  
24 court administrator shall develop a uniform form for use by all courts. In addition to the  
25 information required by statute, the qualification form shall contain inquiries regarding  
26 demographic information sufficient to accomplish the purposes of paragraph (1), information  
27 regarding the length of service, procedures and grounds for requesting an excuse or deferral, and  
28 penalties for not responding or falsifying information.

29 (D) If a prospective juror is unable to complete the juror qualification form, the form may be  
30 completed by another person. The person completing the form shall indicate that fact on the  
31 form, state the reason the form is being completed by someone other than the prospective juror,  
32 state his or her name and address, and sign the form in addition to or on behalf of the prospective  
33 juror.

34 (E) If the clerk determines that there is an omission, ambiguity, or error in a returned  
35 qualification form, the clerk shall return the form to the prospective juror with instructions to  
36 make the necessary addition, clarification, or correction and return the form to the clerk within  
37 ten days after it is received.

38 (F) The clerk of the court shall review all returned qualification forms and record as  
39 disqualified any prospective juror defined by statute not to be a competent juror.

40 (G) The clerk of the court shall notify the state court administrator of any determination that  
41 a prospective juror is not competent to serve as a juror, and the state court administrator shall  
42 accordingly update the master jury list. A prospective juror disqualified from service because of  
43 a temporary disability shall be automatically included in the next qualified jury list following the  
44 termination of the disability.

1 (H) A prospective juror whose qualification form is returned by the United States Postal  
2 authorities as "undeliverable," or "moved - left no forwarding address," or "addressee unknown,"  
3 or other similar statement, shall not be pursued further by the clerk. The clerk shall notify the  
4 state court administrator who shall accordingly update the master jury list.

5 (I) A prospective juror who fails to respond to the qualification form and whose form is not  
6 returned by the postal authorities as undeliverable shall be mailed the qualification form a second  
7 time with a notice that failure to return the form may result in a court order requiring the  
8 prospective juror to appear in person before the clerk to complete the qualification form. If a  
9 prospective juror fails to return the qualification form after the second mailing, the qualification  
10 form and a summons may be delivered to the sheriff for personal service upon the prospective  
11 juror. The summons shall require the prospective juror to complete the qualification form and  
12 deliver it to the court within ten days or to appear before the clerk to prepare the form. Any  
13 prospective juror who fails to complete the form or to appear as ordered shall be subject to the  
14 sanctions set forth in §78-46-20.

15 (6) Excuse or deferral from service.

16 (A) No competent juror is exempt from service.

17 (B) Persons on the qualified juror list may be excused from jury service, either before or after  
18 summons, if their service would be an undue hardship or extreme inconvenience to them or to  
19 the public. This provision does not limit the authority of a judge to remove a juror for cause in  
20 any particular case. The court shall make reasonable accommodations for any prospective juror  
21 with a disability.

22 (C) A prospective juror excused from service because of a temporary hardship shall be  
23 included in the qualified jury list for the term following the termination of the hardship unless  
24 otherwise ordered by the court.

25 (D) Without more, being enrolled as a full or part-time post-high school student is not  
26 sufficient grounds for excuse from service.

27 (E) Disposition of a request for excuse from service may be made by the judge presiding at  
28 the trial to which panel the prospective juror is assigned, the presiding judge of the court, or the  
29 judge designated by the presiding judge for that purpose. The presiding judge may establish  
30 written standards by which the clerk of the court may dispose of requests for temporary excuse.

31 (7) Summons from the qualified jury list.

32 (A) After consultation with the judges or the presiding judge of the court, the clerk of the  
33 court shall determine the number of jurors needed for a particular day. The number of  
34 prospective jurors summoned should be based upon the number of panels, size of the panels, any  
35 alternates, the total number of peremptory challenges plus the anticipated number of prospective  
36 jurors to be excused or deferred from service or removed for cause. ~~(B) The clerk shall summon~~  
37 ~~the smallest number of prospective jurors reasonably necessary to select a trial jury. The clerk~~  
38 ~~shall summon a sufficient number of prospective jurors so that no more than 20 prospective~~  
39 ~~jurors appear for civil cases of \$20,000 or less and misdemeanor cases; and~~

40 ~~(C)~~ The judge may direct that additional jurors be summoned if, because of the notoriety of  
41 the case or other exceptional circumstances, the judge anticipates numerous challenges for cause.

42 ~~(D)~~ (i) The clerk of the court, or other officer of the court at the direction of the clerk, shall  
43 summon jurors from the qualified jury list in the random order in which they appear on the  
44 qualified jury list.

1 (ii) The summons may be by first class mail delivered to the address provided on the juror  
2 qualification form or by telephone.

3 (iii) Mailed summonses shall be on a form approved by the court executive. The summons  
4 shall contain a warning regarding the penalty for failure to obey the summons. The summons  
5 may direct the prospective juror to appear at a date, time, and place certain or may direct the  
6 prospective juror to telephone the court for further information. The summons shall direct the  
7 prospective juror to present the summons for payment. The summons may contain other  
8 information determined to be useful to a prospective juror.

9 (iii) If summons is made by telephone, the clerk shall follow the procedures of paragraph  
10 (10) of this rule.

11 (8) Assignment of qualified prospective jurors to panels. Qualified jurors may be assigned to  
12 panels in the random order in which they appear on the qualified jury list or may be selected in  
13 any other random order. If a prospective juror is removed from one panel, that prospective juror  
14 may be reassigned to another panel if the need exists and if there are no prospective jurors  
15 remaining unassigned.

16 (9) Selection of prospective jurors for voir dire. Qualified jurors may be selected for voir  
17 dire in the random order in which they appear on the qualified jury list, or may be selected in any  
18 other random order.

19 (10) Calling additional jurors. If there is an insufficient number of prospective jurors to fill  
20 all jury panels, the court shall direct the clerk of the court to summon from the qualified jury list  
21 such additional jurors as necessary. The clerk shall make every reasonable effort to contact the  
22 prospective jurors in the order listed on the qualified jury list. If after reasonable efforts the clerk  
23 fails to contact a juror, the clerk shall attempt to contact the next juror on the list. If the clerk is  
24 unable to obtain a sufficient number of jurors in a reasonable period of time, the court may use  
25 any lawful method for acquiring a jury.

26 Rule 4-408. Locations of trial courts of record.

27 Intent:

28 To designate locations of trial courts of record.

29 Applicability:

30 This rule shall apply to all trial courts of record.

31 Statement of the Rule:

32 (1) Each county seat and the following municipalities are hereby designated as locations of  
33 trial courts of record: American Fork; Bountiful; Cedar City; Layton; Murray; Orem; ~~Park City~~;  
34 Roosevelt; Roy; Salem; Sandy; Spanish Fork; West Valley City.

35 (2) The following unincorporated areas of a county are designated as locations of trial courts  
36 of record: the Silver Summit area of Summit County.

37 ~~(2)~~ (3) Subject to limitations imposed by law, any trial court of record may hold court in any  
38 location designated by this rule.

39 Rule 4-408.01. Responsibility for administration of trial courts.

40 Intent:

41 To designate the court locations administered directly through the administrative office of the  
42 courts and those administered through contract with local government pursuant to ' 78-3-21.

43 Applicability:

44 This rule shall apply to the trial courts of record and to the administrative office of the courts.

45 Statement of the Rule:

1 (1) All locations of the juvenile court shall be administered directly through the  
2 administrative office of the courts.

3 (2) All locations of the district court shall be administered directly through the administrative  
4 office of the courts, except the following, which shall be administered through contract with  
5 county or municipal government pursuant to ' 78-3-21: ~~Coalville~~, Fillmore, Junction, Kanab,  
6 Loa, Manila, Manti, Morgan, Panguitch, ~~Park City~~, Randolph, and Salem.

7 Rule 4-501. Motions.

8 Intent:

9 To establish a uniform procedure for filing motions, supporting memoranda and documents  
10 with the court.

11 To establish a uniform procedure for requesting and scheduling hearings on dispositive  
12 motions.

13 To establish a procedure for expedited dispositions.

14 Applicability:

15 This rule shall apply to motion practice in all trial courts of record except proceedings before  
16 the court commissioners and small claims cases. This rule does not apply to petitions for habeas  
17 corpus or other forms of extraordinary relief.

18 Statement of the Rule:

19 (1) Filing and service of motions and memoranda.

20 (A) Motion and supporting memoranda. All motions, except uncontested or ex-parte matters,  
21 shall be accompanied by a memorandum of points and authorities appropriate affidavits, and  
22 copies of or citations by page number to relevant portions of depositions, exhibits or other  
23 documents relied upon in support of the motion. Memoranda supporting or opposing a motion  
24 shall not exceed ten pages in length exclusive of the "statement of material facts" as provided in  
25 paragraph (2), except as waived by order of the court on ex-parte application. If an ex-parte  
26 application is made to file an over-length memorandum, the application shall state the length of  
27 the principal memorandum, and if the memorandum is in excess of ten pages, the application  
28 shall include a summary of the memorandum, not to exceed five pages.

29 (B) Memorandum in opposition to motion. The responding party shall file and serve upon all  
30 parties within ten days after service of a motion, a memorandum in opposition to the motion, and  
31 all supporting documentation. If the responding party fails to file a memorandum in opposition to  
32 the motion within ten days after service of the motion, the moving party may notify the clerk to  
33 submit the matter to the court for decision as provided in paragraph (1)(D) of this rule.

34 (C) Reply memorandum. The moving party may serve and file a reply memorandum within  
35 five days after service of the responding party's memorandum.

36 (D) Notice to submit for decision. Upon the expiration of the five-day period to file a reply  
37 memorandum, either party may notify the clerk to submit the matter to the court for decision.  
38 The notification shall be in the form of a separate written pleading and captioned "Notice to  
39 Submit for Decision." The Notice to Submit for Decision shall state the date on which the motion  
40 was served, the date the memorandum in opposition, if any, was served, the date the reply  
41 memorandum, if any, was served, and whether a hearing has been requested. The notification  
42 shall contain a certificate of mailing to all parties. If neither party files a notice, the motion will  
43 not be submitted for decision.

44 (2) Motions for summary judgment.



1 (A) Memorandum in support of a motion. The points and authorities in support of a motion  
2 for summary judgment shall begin with a section that contains a concise statement of material  
3 facts as to which movant contends no genuine issue exists. The facts shall be stated in separate  
4 numbered sentences and shall specifically refer to those portions of the record upon which the  
5 movant relies.

6 (B) Memorandum in opposition to a motion. The points and authorities in opposition to a  
7 motion for summary judgment shall begin with a section that contains a verbatim restatement of  
8 each of the movant's statement of facts as to which the party contends a genuine issue exists  
9 followed by a concise statement of material facts which support the party's contention. ~~a~~  
10 ~~concise statement of material facts as to which the party contends a genuine issue exists.~~ Each  
11 disputed fact shall be stated in separate numbered sentences and shall specifically refer to those  
12 portions of the record upon which the opposing party relies, ~~and, if applicable, shall state the~~  
13 ~~numbered sentence or sentences of the movant's facts that are disputed.~~ All material facts set  
14 forth in the movant's statement and properly supported by an accurate reference to the record  
15 shall be deemed admitted for the purpose of summary judgment unless specifically controverted  
16 by the opposing party's statement.

17 (3) Hearings.

18 (A) A decision on a motion shall be rendered without a hearing unless ordered by the court,  
19 or requested by the parties as provided in paragraphs (3)(B) or (4) below.

20 (B) In cases where the granting of a motion would dispose of the action or any claim in the  
21 action on the merits with prejudice, either party at the time of filing the principal memorandum  
22 in support of or in opposition to a motion may file a written request for a hearing.

23 (C) Such request shall be granted unless the court finds that (a) the motion or opposition to  
24 the motion is frivolous or (b) that the dispositive issue or set of issues governing the granting or  
25 denial of the motion has been authoritatively decided.

26 (D) When a request for hearing is denied, the court shall notify the requesting party. When a  
27 request for hearing is granted, the court shall set the matter for hearing or notify the requesting  
28 party that the matter shall be heard and the requesting party shall schedule the matter for hearing  
29 and notify all parties of the date and time.

30 (E) In those cases where a hearing is granted, a courtesy copy of the motion, memorandum of  
31 points and authorities and all documents supporting or opposing the motion shall be delivered to  
32 the judge hearing the matter at least two working days before the date set for hearing. Copies  
33 shall be clearly marked as courtesy copies and indicate the date and time of the hearing. Courtesy  
34 copies shall not be filed with the clerk of the court.

35 (F) If no written request for a hearing is made at the time the parties file their principal  
36 memoranda, a hearing on the motion shall be deemed waived.

37 (G) All dispositive motions shall be heard at least thirty (30) days before the scheduled trial  
38 date. No dispositive motions shall be heard after that date without leave of the court.

39 (H) If a hearing has been requested and the non-moving party fails to file a memorandum in  
40 opposition, the moving party may withdraw the request or the court on its own motion may strike  
41 the request and decide the motion without oral argument.

42 (4) Expedited dispositions. Upon motion and notice and for good cause shown, the court  
43 may grant a request for an expedited disposition in any case where time is of the essence and  
44 compliance with the provisions of this rule would be impracticable or where the motion does not  
45 raise significant legal issues and could be resolved summarily.

(5) Telephone conference. The court on its own motion or at a party's request may direct arguments of any motion by telephone conference without court appearance. A verbatim record shall be made of all telephone arguments and the rulings thereon if requested by counsel.

Rule 9-105. Justice Court hours.

Intent:

To establish minimum court hours for Justice Courts.

Applicability:

This rule shall apply to all Justice Courts.

Statement of the Rule:

(1) Every Justice Court shall establish a regular schedule of court hours to be posted in a conspicuous location at the court site.

(2) The Justice Court judge shall be available during the scheduled hours of court operation and the Justice Court judge or clerk shall be in attendance at the court during the regularly scheduled hours of operation.

(3) Justice Courts shall provide, at a minimum, the following hours of operation:

Number of Average	Hours Per <del>Week</del> Day
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Monthly Filings	
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0-25	60	21
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25-50	61-150	42
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51-100	151-200	63
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101-200	201-300	124
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301-400		5
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401-500		6
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201 501 or more		408
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(4) The Justice Court judge may schedule the court hours to meet the needs of the litigants and the availability of bailiff and clerk services.

(5) Court hours shall be set at least quarterly and the Justice Court judge shall annually send notice to the Administrative Office of the Courts of the hours which have been set for court operation.

Rule 11-302. Admission Pro Hac Vice.

Intent:

To provide a uniform method for the qualification of out of state counsel to practice before the courts of Utah.

Applicability:

This rule shall apply to any attorney who is not a member of the Utah State Bar appearing as counsel before a court of record or not of record.

Statement of the Rule:

(a) An attorney who is not a member of the Utah State Bar but who is admitted to practice law in another state or in any court of the United States or Territory or Insular Possession of the United States shall apply to be admitted pro hac vice in accordance with this rule prior to appearing as counsel in a court of record or not of record.

(b) Nonresident counsel may be permitted to appear in a particular case if the court in which the case is pending determines that admission pro hac vice will serve the interests of the parties and the efficient and just administration of the case. Admission pro hac vice under this rule is discretionary with the court in which the application for admission is made. Admission pro hac

1 vice may be revoked by the court upon its own motion or the motion of a party if, after notice  
2 and a hearing, the court determines that admission pro hac vice is inappropriate. Admission pro  
3 hac vice shall be denied or, if granted, shall be revoked if the court determines that the process is  
4 being used to circumvent the normal requirements for the admission of attorneys to the practice  
5 of law in this state.

6 (c) In determining whether to enter or revoke the order of admission pro hac vice, the court  
7 may consider any relevant information, including whether non resident counsel:

- 8 (1) is familiar with Utah rules of evidence and procedure, including applicable local rules;  
9 (2) is available to opposing parties;  
10 (3) has particular familiarity with the legal affairs of the party relevant to the case;  
11 (4) complies with the rulings and orders of the court;  
12 (5) has caused delay or been disruptive; and  
13 (6) has been disciplined in any other jurisdiction within the prior 5 years.

14 (d) The attorney seeking admission pro hac vice shall complete under oath and submit to the  
15 Utah State Bar an application form available from the Utah State Bar or court clerks= office . The  
16 applicant shall attach to the application form a Certificate of Good Standing from the licensing  
17 state in which the applicant resides. The applicant shall complete a separate application for each  
18 case in which the applicant wants to appear. The fee for each application is ~~\$75~~, \$175, which  
19 shall be paid to the Utah State Bar. Fees paid under this rule shall be used for attorney discipline  
20 investigations and proceedings.

21 (e) A copy of the application and a receipt showing payment of the fee shall be filed in the  
22 court in which the case is pending, with a motion by a member of the Utah State Bar to admit the  
23 applicant pro hac vice and a consent by that member of the Utah State Bar to appear as associate  
24 counsel. Associate counsel shall be a resident of the state of Utah. The application form shall  
25 include:

26 (1) the name, address, telephone number, fax number, e-mail address, bar identification  
27 number(s), and state(s) of admission of the applicant;

28 (2) the name and number of the case in which the applicant is seeking to appear as the  
29 attorney of record or, if the case has not yet been filed, a description of the parties;

30 (3) the name, number, and court of other cases pending or closed within the prior 5 years in  
31 any state or federal court of Utah in which the applicant or a member of the applicant=s firm  
32 appears pro hac vice;

33 (4) a statement whether, in any state, the applicant:

34 (A) is currently suspended or disbarred from the practice of law;

35 (B) has been disciplined within the prior 5 years; or

36 (C) is the subject of any pending disciplinary proceedings;

37 (5) a statement that the applicant:

38 (A) submits to the disciplinary authority and procedures of the Utah State Bar;

39 (B) is familiar with the rules of procedure and evidence, including applicable local rules;

40 (C) will be available for depositions, hearings, and conferences; and

41 (D) will comply with the rulings and orders of the court;

42 (6) the name, address, Utah State Bar identification number, telephone number, fax number,  
43 and e-mail address of the member of the Utah State Bar to serve as associate counsel; and

44 (7) any other information relevant to the standards for the admission of the applicant.

45 (f) Utah counsel associated with nonresident counsel seeking admission pro hac vice shall:

(1) file a motion for admission of the applicant pro hac vice;  
(2) serve the motion by mail, hand-delivery or facsimile on the Utah State Bar's General Counsel on or before filing with the court and include a certificate of service with the motion evidencing service on the Utah State Bar's General Counsel and upon the opposing parties, or, if represented, their counsel;  
(3) file a written consent to appear as associate counsel;  
(4) sign the first pleading filed;  
(5) continue as one of the counsel of record in the case unless another member of the Utah State Bar is substituted as associate counsel; and  
(6) be available to opposing counsel and the court for communication regarding the case and the service of papers.  
(g) The court may require Utah counsel to appear at all hearings. Utah counsel shall have the responsibility and authority to act for the client in all proceedings if the nonresident attorney fails to appear or fails to respond to any order of the court .  
(h) An attorney admitted pro hac vice shall comply with and is subject to Utah statutes, rules of the Utah Supreme Court, including the Rules of Professional Conduct and the Rules of Lawyer Discipline and Disability, the rules of the court in which the attorney appears, and the rules of the Code of Judicial Administration.

#### Code of Judicial Conduct

Canon 5. A Judge Shall Refrain from Political Activity Inappropriate to the Judicial Office.

A. A candidate for selection by a judicial nominating commission shall not engage in political activities that would jeopardize the confidence of the public or of governmental officials in the political impartiality of the judicial branch of government. A candidate for selection to a judicial office shall not:

(1) misrepresent the candidate's identity, qualifications, present position, education, prior experience or any other fact;

(2) make promises or pledges of conduct in office other than the faithful, impartial and diligent performance of judicial duties; or

(3) seek support or invite opposition to the candidacy because of membership in a political party.

B. A judge or a candidate for a judicial office who has been confirmed by the Senate shall not:

(1) act as a leader or hold any office in a political organization;

(2) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(3) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings or purchase tickets for political party dinners or other functions, except as authorized in Canon 5C; or

(4) take a public position on a non-partisan political issue which would jeopardize the confidence of the public in the impartiality of the judicial system.

C. If a candidate for judicial office in a retention election or reappointment process has drawn active public opposition, the candidate may operate a campaign for office subject to the following limitations:

1 (1) The candidate shall not make pledges or promises of conduct in office other than the  
2 faithful and impartial performance of the duties of the office or misrepresent the candidate's  
3 identity, qualifications, present position, or other facts.

4 (2) The candidate shall not directly solicit or accept campaign funds or solicit publicly stated  
5 support, but may establish committees of responsible persons to secure and manage the  
6 expenditure of funds for the campaign and to obtain public statements of support. Committees  
7 may solicit campaign contributions and public statements of support from lawyers and non-  
8 lawyers. Surplus contributions held by the committee after the election shall be contributed  
9 without public attribution to the Utah Bar Foundation. Committees must not permit the use of  
10 campaign contributions for the private benefit of the judge or members of the judge's family.

11 (3) The candidate may speak to public gatherings on the candidate's own behalf.

12 (4) A candidate may respond to personal attacks or attacks on the candidate's record as long  
13 as the response does not violate Canon 5C(1).

14 (5) When a party or lawyer who made a contribution of \$50 or more to a judge's campaign  
15 committee appears in a case, the judge shall disclose the contribution to the parties. The  
16 requirement to disclose shall continue from the time the judge forms a campaign committee until  
17 180 days after the general election.

18 D. Judges and candidates for judicial office:

19 (1) should maintain the dignity appropriate to judicial office and act in a manner consistent  
20 with the integrity and independence of the judiciary, and should encourage members of the  
21 judge's or candidate's family to adhere to the same standards of political conduct in support of  
22 the judge or candidate as apply to the judge or candidate;

23 (2) should discourage employees or officials subject to the judge's or candidate's direction  
24 and control from doing on the judge's or candidate's behalf what the judge or candidate is  
25 prohibited from doing under this Canon; and

26 (3) except to the extent permitted by Canon 5C(2), shall neither request nor encourage, and  
27 should not knowingly permit, any other person to do for the judge or candidate what the judge or  
28 candidate is prohibited from doing under this Canon.

29 E. A judge shall resign from judicial office upon becoming a candidate for non-judicial office  
30 either in a primary or in a general election, except that the judge may continue to hold judicial  
31 office while being a candidate for election to or serving as a delegate in a state constitutional  
32 convention.

33 F. A lawyer who is an unsuccessful candidate for judicial office is subject to lawyer  
34 discipline for violations of this Canon pursuant to Rule of Professional Conduct 8.2.

## 35 Rules of Professional Conduct

### 36 Rule 1.7. Conflict of interest: general rule.

37 (a) A lawyer shall not represent a client if the representation of that client will be directly  
38 adverse to another client, unless:

39 (1) The lawyer reasonably believes the representation will not adversely affect the  
40 relationship with the other client; and

41 (2) Each client consents after consultation.

42 (b) A lawyer shall not represent a client if the representation of that client may be materially  
43 limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's  
44 own interest, unless:

45 (1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) Each client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation to each client of the implications of the common representation and the advantages and risks involved.

~~(c) A lawyer shall not simultaneously represent the interests of adverse parties in separate matters, unless:~~

~~(1) The lawyer reasonably believes the representation of each will not be adversely affected; and~~

~~(2) Each client consents after consultation.~~

#### COMMENT

##### Loyalty to a Client

Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See Rule 1.16. Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9. See also Rule 2.2(c). As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without the client's consent. Paragraph (1) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Paragraph (a) applies only when the representation of one client would be directly adverse to the other.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

##### Consultation and Consent

A client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a)(1) with respect to representation directly adverse to a client and paragraph (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to

1 permit the other client to make an informed decision, the lawyer cannot properly ask the latter to  
2 consent.

### 3 Lawyer's Interests

4 The lawyer's own interests should not be permitted to have adverse effect on representation  
5 of a client. For example, a lawyer's need for income should not lead the lawyer to undertake  
6 matters that cannot be handled competently and at a reasonable fee. See Rules 1.1 and 1.5. If the  
7 probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or  
8 impossible for the lawyer to give a client detached advice. A lawyer may not allow related  
9 business interests to affect representation, for example, by referring clients to an enterprise in  
10 which the lawyer has an undisclosed interest.

### 11 Conflicts in Litigation

12 Paragraph (a) prohibits representation of opposing parties in litigation. Simultaneous  
13 representation of parties whose interests in litigation may conflict, such as co-plaintiffs or  
14 co-defendants, is governed by paragraph (b). An impermissible conflict may exist by reason of  
15 substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an  
16 opposing party or the fact that there are substantially different possibilities of settlement of the  
17 claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The  
18 potential for conflict of interest in representing multiple defendants in a criminal case is so grave  
19 that ordinarily a lawyer should decline to represent more than one co-defendant. On the other  
20 hand, common representation of persons having similar interests is proper if the risk of adverse  
21 affect is minimal and the requirements of paragraph (b) are met. Compare Rule 2.2, involving  
22 intermediation between clients.

23 Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some  
24 other matter, even if the other matter is wholly unrelated. However, there are circumstances in  
25 which a lawyer may act as an advocate against a client. For example, a lawyer representing an  
26 enterprise with diverse operations may accept employment as an advocate against the enterprise  
27 in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the  
28 enterprise or conduct of the suit and if both clients consent upon consultation. By the same token,  
29 government lawyers in some circumstances may represent government employees in proceedings  
30 in which a government agency is the opposing party. The propriety of concurrent representation  
31 can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a  
32 degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

33 A lawyer may represent parties having antagonistic positions on a legal question that has  
34 arisen in different cases, unless representation of either client would be adversely affected. Thus,  
35 it is ordinarily not improper to assert such positions in cases pending in different trial courts, but  
36 it may be improper to do so in cases pending at the same time in an appellate court.

### 37 Interest of Person Paying for Lawyer's Service

38 A lawyer may be paid from a source other than the client if the client is informed of that fact  
39 and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client.  
40 See Rule 1.8(f). For example, when an insurer and its insured have conflicting interests in a  
41 matter arising from a liability insurance agreement and the insurer is required to provide separate  
42 counsel for the insured, the arrangement should assure the separate counsel's professional  
43 independence. So also, when a corporation and its directors or employees are involved in a  
44 controversy in which they have conflicting interests, the corporation may provide funds for

1 separate legal representation of the directors or employees, if the clients consent after  
2 consultation and the arrangement ensures the lawyer's professional independence.

### 3 Other Conflict Situations

4 Conflicts of interest in contexts other than litigation sometimes may be difficult to assess.  
5 Relevant factors in determining whether there is potential for adverse effect include the duration  
6 and intimacy of the lawyer's relationship with the client or clients involved, the functions being  
7 performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to  
8 the client from the conflict if it does arise. The question is often one of proximity and degree.

9 For example, a lawyer may not represent multiple parties to a negotiation whose interests are  
10 fundamentally antagonistic to each other, but common representation is permissible where the  
11 clients are generally aligned in interest even though there is some difference of interest among  
12 them.

13 Conflict questions may also arise in estate planning and estate administration. A lawyer may  
14 be called upon to prepare wills for several family members, such as husband and wife, and  
15 depending upon the circumstances, a conflict of interest may arise. In estate administration, the  
16 identity of the client may be unclear under the law of a particular jurisdiction. Under one view,  
17 the client is the fiduciary; under another view, the client is the estate or trust, including its  
18 beneficiaries. The lawyer should make clear the relationship to the parties involved.

19 A lawyer for a corporation or other organization who is also a member of its board of  
20 directors should determine whether the responsibilities of the two roles may conflict. The lawyer  
21 may be called on to advise the corporation in matters involving actions of the directors.  
22 Consideration should be given to the frequency with which such situations may arise, the  
23 potential intensity of the conflict, the effect of the lawyer's resignation from the board and the  
24 possibility of the corporation's obtaining legal advice from another lawyer in such situations. If  
25 there is material risk that the dual role will compromise the lawyer's independence of  
26 professional judgment, the lawyer should not serve as a director.

### 27 Conflict Charged by an Opposing Party

28 Resolving questions of conflict of interest is primarily the responsibility of the lawyer  
29 undertaking the representation. In litigation, a court may raise the question when there is reason  
30 to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is  
31 generally required when a lawyer represents multiple defendants. Where the conflict is such as  
32 clearly to call in question the fair or efficient administration of justice, opposing counsel may  
33 properly raise the question. Such an objection should be viewed with caution, however, for it can  
34 be misused as a technique of harassment. See Scope.

### 35 Rule 2.2. Intermediary.

36 (a) A lawyer may act as intermediary between clients if:

37 (1) The lawyer consults with each client concerning the implications of the common  
38 representation, including the advantages and risks involved, and the effect of the attorney-client  
39 privileges, and obtains each client's consent to the common representation; and

40 (2) The lawyer reasonably believes that the matter can be resolved on terms compatible with  
41 ~~the~~ each client's best interest, that each client will be able to make adequately informed decisions  
42 in the matter and that there is little risk of material prejudice to the interests of any of the clients  
43 if the contemplated resolution is unsuccessful; and



1 (3) The lawyer reasonably believes that the common representation can be undertaken  
2 impartially and without improper effect on other responsibilities the lawyer has to any of the  
3 clients; and

4 (4) All requirements of Rules 1.7 and 1.8 are met.

5 (b) While acting as intermediary, the lawyer shall consult with each client concerning the  
6 decisions to be made and the considerations relevant in making them, so that each client can  
7 make adequately informed decisions.

8 (c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the  
9 conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not  
10 continue to represent any of the clients in the matter that was the subject of the intermediation.

11 COMMENT

12 A lawyer acts as intermediary under this Rule when the lawyer represents two or more  
13 parties with potentially conflicting interests. A key factor in defining the relationship is whether  
14 the parties share responsibility for the lawyer's fee, but the common representation may be  
15 inferred from other circumstances. Because confusion can arise as to the lawyer's role where  
16 each party is not separately represented, it is important that the lawyer make clear the  
17 relationship.

18 The Rule does not apply to a lawyer acting as arbitrator or mediator between or among  
19 parties who are not clients of the lawyer, even where the lawyer has been appointed with the  
20 concurrence of the parties. In performing such a role the lawyer may be subject to applicable  
21 codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a  
22 joint Committee of the American Bar Association and the American Arbitration Association.

23 A lawyer acts as intermediary in seeking to establish or adjust a relationship between clients  
24 on an amicable and mutually advantageous basis; for example, in helping to organize a business  
25 in which two or more clients are entrepreneurs, working out the financial reorganization of an  
26 enterprise in which two or more clients have an interest, arranging a property distribution in  
27 settlement of an estate or mediating a dispute between clients. The lawyer seeks to resolve  
28 potentially conflicting interests by developing the parties' mutual interests. The alternative can be  
29 that each party may have to obtain separate representation, with the possibility in some situations  
30 of incurring additional cost, complication or even litigation. Given these and other relevant  
31 factors, all the clients may prefer that the lawyer act as intermediary.

32 In considering whether to act as intermediary between clients, a lawyer should be mindful  
33 that if the intermediation fails the result can be additional cost, embarrassment and recrimination.  
34 In some situations the risk of failure is so great that intermediation is plainly impossible. For  
35 example, a lawyer cannot undertake common representation of clients between whom  
36 contentious litigation is imminent or who contemplate contentious negotiations. More generally,  
37 if the relationship between the parties has already assumed definite antagonism, the possibility  
38 that the clients' interests can be adjusted by intermediation ordinarily is not very good.

39 The appropriateness of intermediation can depend on its form. Forms of intermediation range  
40 from informal arbitration, where each client's case is presented by the respective client and the  
41 lawyer decides the outcome, to mediation, to common representation where the clients' interests  
42 are substantially though not entirely compatible. One form may be appropriate in circumstances  
43 where another would not. Other relevant factors are whether the lawyer subsequently will  
44 represent both parties on a continuing basis and whether the situation involves creating a  
45 relationship between the parties or terminating one.

1 Confidentiality and Privilege

2 A particularly important factor in determining the appropriateness of intermediation is the  
3 effect on client-lawyer confidentiality and the attorney-client privilege. In a common  
4 representation, the lawyer is still required both to keep each client adequately informed and to  
5 maintain confidentiality of information relating to the representation. See Rules 1.4 and 1.6.  
6 Complying with both requirements while acting as intermediary requires a delicate balance. If  
7 the balance cannot be maintained, the common representation is improper. With regard to the  
8 attorney-client privilege, the prevailing rule is that as between commonly represented clients the  
9 privilege does not attach. Hence, it must be assumed that if litigation eventuates between the  
10 clients, the privilege will not protect any such communications, and the clients should be so  
11 advised.

12 Since the lawyer is required to be impartial between commonly represented clients,  
13 intermediation is improper when that impartiality cannot be maintained. For example, a lawyer  
14 who has represented one of the clients for a long period and in a variety of matters might have  
15 difficulty being impartial between that client and one to whom the lawyer has only recently been  
16 introduced.

17 Consultation

18 In acting as intermediary between clients, the lawyer is required to consult with the clients on  
19 the implications of doing so, and proceed only upon consent based on such a consultation. The  
20 consultation should make clear that the lawyer's role is not that of partisanship normally  
21 expected in other circumstances.

22 Paragraph (b) is an application of the principle expressed in Rule 1.4. Where the lawyer is  
23 intermediary, the clients ordinarily must assume greater responsibility for decisions than when  
24 each client is independently represented.

25 Withdrawal

26 Common representation does not diminish the rights of each client in the client-lawyer  
27 relationship. Each has the right to loyal and diligent representation, the right to discharge the  
28 lawyer as stated in Rule 1.14, and the protection of Rule 1.9 concerning obligations to a former  
29 client.

30 Rule 7.2. Advertising.

31 (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through  
32 public media, such as a telephone directory, legal directory, newspaper or other periodical,  
33 outdoor advertising, radio or television, or through written or recorded communication.

34 (b) A copy or recording of an advertisement or written communication shall be kept for two  
35 years after its last dissemination along with a record of when and where it was used.

36 (c) A lawyer shall not give anything of value to a person for recommending the lawyer's  
37 services, except that a lawyer may:

38 (1) pay the reasonable cost of advertising or written communication permitted by this Rule;  
39 ~~and may~~

40 (2) pay the usual charges of a lawyer referral service or other legal service organization;

41 (3) pay for a law practice in compliance with the Rules of Professional Conduct, including  
42 Rule 1.17; or

43 (4) divide a fee with another lawyer but only as allowed permitted by the provisions of Rule  
44 1.5(e). This provision does not prevent the sale of a law practice that otherwise complies with the  
45 Rules of Professional Conduct, including Rule 1.17.

1 (d) Any communication made pursuant to this Rule shall include the name of at least one  
2 lawyer responsible for its content.

3 COMMENT

4 To assist the public in obtaining legal services, lawyers should be allowed to make known  
5 their services not only through reputation but also through organized information campaigns in  
6 the form of advertising. Advertising involves an active quest for clients, contrary to the tradition  
7 that a lawyer should not seek clientele. However, the public's need to know about legal services  
8 can be fulfilled in part through advertising. This need is particularly acute in the case of persons  
9 of moderate means who have not made extensive use of legal services. The interest in expanding  
10 public information about legal services ought to prevail over considerations of tradition.  
11 Nevertheless, advertising by lawyers entails the risk of practices that are misleading or  
12 overreaching.

13 This Rule permits public dissemination of information concerning a lawyer's name or firm  
14 name, address and telephone number; the kinds of services the lawyer will undertake; the basis  
15 on which the lawyer's fees are determined, including prices for specific services and payment  
16 and credit arrangements; a lawyer's foreign language ability; names of references and, with their  
17 consent, names of clients regularly represented; and other information that might invite the  
18 attention of those seeking legal assistance.

19 Questions of effectiveness and taste in advertising are matters of speculation and subjective  
20 judgment. Some jurisdictions have had extensive prohibitions against television advertising,  
21 against advertising going beyond specified facts about a lawyer, or against "undignified"  
22 advertising. Television is now one of the most powerful media for getting information to the  
23 public, particularly persons of low and moderate income; prohibiting television advertising,  
24 therefore, would impede the flow of information about legal services to many sectors of the  
25 public. Limiting the information that may be advertised has a similar effect and assumes that the  
26 Bar can accurately forecast the kind of information that the public would regard as relevant.

27 Neither this Rule nor Rule 7.1 prohibits communications authorized by law, such as notice to  
28 members of a class in class action litigation.

29 Record of Advertising

30 Paragraph (b) requires that a record of the content and use of advertising be kept in order to  
31 facilitate enforcement of this Rule. It does not require that advertising be subject to review prior  
32 to dissemination. Such a requirement would be burdensome and expensive relative to its possible  
33 benefits, and may be of doubtful constitutionality.

34 Paying Others to Recommend a Lawyer

35 ~~A lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not~~  
36 ~~permitted to pay another person for channeling professional work on a fee per case basis. A~~  
37 lawyer is allowed to pay for advertising and written communications permitted by this Rule, to  
38 pay for a law practice in compliance with the Rules of Professional Conduct, including Rule  
39 1.17, and to pay referral fees permitted by Rule 1.5(e), even if such fees are paid on a fee-per-  
40 case basis. Fees may not be paid to a lawyer referral service or to a legal services organization  
41 on a fee-per-case basis. This restriction does not prevent an organization or person other than the  
42 lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or  
43 prepaid legal services plan may pay to advertise legal services provided under its auspices.  
44 Likewise, a lawyer may participate in lawyer referral programs and pay the usual fees charged by

1 such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such  
2 as a secretary, to prepare communications permitted by this Rule.  
3